Supreme Court, U.S.
FILED

97 18 32 MAY 19 1998

OFFICE OF THE CLERK

No. 97-___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG et alia,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

GLENN M. TAUBMAN
Counsel of Record for
Petitioners
c/o National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

May 1998

H1PP

QUESTIONS PRESENTED

1) Are labor unions covered by the National Labor Relations Act required to provide nonmembers with financial statements that are audited by an independent certified public accountant, to explain and justify the amount of the agency fee; or, may they provide nonmembers with only unaudited statements prepared by union members in good standing, who are also paid employees of the union?

2) May a labor union covered by the National Labor Relations Act charge nonmembers for litigation expenses incurred outside their bargaining units?

3) May a labor union covered by the National Labor Relations Act charge nonmembers for bargaining expenses incurred outside their bargaining units, including expenses incurred for bargaining units covered by the Railway Labor Act, federal and state public sector labor laws, and Canadian labor laws?

PARTIES TO THE PROCEEDINGS BELOW

The Petitioners are Alan Strang, Richard A. Martin, Richard Dietrich, Thomas Gratz, Constance Downs, Darrold Kaestner, Charles Burnette, Bert Graham, Clarence Hull, William Koehly, Elizabeth S. Morehouse, Ronaele Joanne Findley, Melville James Arnot, James K. Humphreys, Leonard J. Kuhnlein, Denis McMahan, Donna M. Mendoza, Randall Sparks, James M. Sumter, Richard Price, Paul Sjotvedt, Randy D. Adams, Leah S. Harbison, Ruth Wright, Gene Dinsmore, Martha L. Payne, Mark V. Bluteau, David Mitchell and Lawrence Stone. These individual employees were charging parties before the National Labor Relations Board and filed their petition for review in the United States Court of Appeals for the District of Columbia Circuit (which subsequently transferred the petition to the United States Court of Appeals for the Seventh Circuit).[1] These individual employees also intervened in the cross-petition filed in the Seventh Circuit by the International Association of Machinists and Aerospace Workers ("IAM") and its affiliates.

The National Labor Relations Board ("NLRB") is the Respondent in this Court, and was a respondent in the court of appeals.

The IAM and its District Lodge Nos. 50, 66, 115, 120, 508, 720 and 751, and its Local Lodge Nos. 78, 354, 821, 946, 1125, 1327, 1871, 1916, 2024, 2227 and 2230 were respondents in the proceedings before the NLRB, and were cross-petitioners and intervenors in the United States Court of Appeals for the Seventh

---

[1] Petitioners Strang *et alia* filed their petition for review in the D.C. Circuit (docketed as D.C. Circuit Case No. 96-1028). The IAM unions filed a simultaneous petition for review in the Seventh Circuit (docketed as Seventh Circuit Case No. 96-1246). On April 15, 1996, the Judicial Panel on Multidistrict Litigation randomly selected the Seventh Circuit to hear both of these petitions for review, pursuant to 28 U.S.C. § 2112. *In re National Labor Relations Board*, 936 F. Supp. 1091 (Jud. Pan. Mult. Lit. 1996). On August 6, 1996, the Seventh Circuit docketed Petitioners' transferred petition as Case No. 96-2928. On September 30, 1996, the NLRB filed a subsequent petition for enforcement, docketed as Seventh Circuit Case No. 96-3467.

Circuit. An employer, the California Saw and Knife Works, was also a respondent in the proceedings before the NLRB. California Saw and Knife Works did not participate in the review proceedings in the court of appeals.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 2

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 9

QUESTIONS 1: THE COURTS OF APPEALS HAVE DIVIDED ON THE ISSUE OF WHETHER UNIONS MUST PROVIDE NONMEMBERS WITH FINANCIAL STATEMENTS AUDITED BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, TO EXPLAIN AND JUSTIFY THEIR REDUCED FEE CALCULATIONS. THIS COURT SHOULD RESOLVE THE SPLIT IN THE CIRCUITS 10

QUESTION 2: IN *ELLIS v. RAILWAY CLERKS*, THIS COURT RULED THAT NONMEMBERS COVERED BY THE RAILWAY LABOR ACT CANNOT BE

TABLE OF CONTENTS - CONTINUED

Page

FORCED TO PAY FOR UNION LITIGATION EXPENSES INCURRED OUTSIDE THEIR BARGAINING UNIT. THE IDENTICAL PRINCIPLES APPLY UNDER THE NATIONAL LABOR RELATIONS ACT 16

QUESTION 3: CONGRESS DID NOT INTEND TO FORCE NONMEMBERS COVERED BY THE NLRA TO SUBSIDIZE UNION ACTIVITIES IN UNRELATED BARGAINING UNITS AND INDUSTRIES, AND BARGAINING UNITS COVERED BY PUBLIC SECTOR LABOR LAWS AND CANADIAN LABOR LAWS 21

A. The National Labor Relations Board Only Oversees Private Sector Labor Relations Arising Under the National Labor Relations Act. The Board Has No Authority to Require Nonmembers to Support Non-NLRA Activities 21

B. The Rights and Duties Created by the NLRA Are Based Upon the Existence of Discrete and Clearly Defined Bargaining Units. The Board and the Court Below Erred When They Allowed the IAM to Ignore These "Bargaining Unit" Limitations at Will 24

CONCLUSION 27

TABLE OF AUTHORITIES

CASES *Page*

Abood v. Detroit Board of Educ.,
431 U.S. 209 (1977) 11, 13

Abrams v. CWA,
59 F.3d 1373 (D.C. Cir. 1995) 15, 16

Albro v. Indianapolis Educ. Ass'n,
585 N.E.2d 666 (Ind. App.), *adopted sub nom.*
Fort Wayne Educ. Ass'n v. Aldrich,
594 N.E.2d 781 (Ind. 1992) 17

Allied Chemical & Alkali Workers, Local 1 v.
Pittsburgh Plate Glass, 404 U.S. 157 (1971) 26

American Radio Ass'n v. Mobile S.S.
Ass'n, Inc., 419 U.S. 215 (1974) 23

Beck v. CWA, 114 L.R.R.M. 2523 (D. Md 1983) 13

Benz v. Compania Naviera Hidalgo, S.A.,
353 U.S. 138 (1957) 23

Bromley v. Michigan Educ. Ass'n,
82 F.3d 686 (6th Cir. 1996) *cert. denied*,
___ U.S. ___, 117 S. Ct. 682 (1997) 11

Browne v. Wisconsin Employment Relations Comm'n,
485 N.W.2d 376 (Wis. 1992) 17

California Saw & Knife Works,
320 N.L.R.B. 224 (1995) ..... *passim*

TABLE OF AUTHORITIES - CONTINUED

Page

Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) ..... *passim*

CWA v. Beck, 487 U.S. 735 (1988) ..... *passim*

CWA Local 9403 (Pacific Bell), 322 N.L.R.B. 142 (1996), *petition for review denied sub nom. Finerty v. NLRB*, 113 F.3d 1288 (D.C. Cir. 1997), *cert. denied*, ___ U.S. ___, 118 S. Ct. 558 (1997) 21

Crawford v. Air Line Pilots Ass'n, 992 F.2d 1295 (4th Cir. 1993) 15, 17

Dashiell v. Montgomery Cty., 925 F.2d 750 (4th Cir. 1991) 12

Dowd v. International Longshoremen's Ass'n, 781 F. Supp. 1565 (M.D. Fla. 1991), *aff'd*, 975 F.2d 779 (11th Cir. 1992) 23

Ellis v. Railway Clerks, 466 U.S. 435 (1984) ..... *passim*

Ellis v. Railway Clerks, 685 F.2d 1065, (9th Cir. 1982), *rev'd in pertinent part*, 466 U.S. 435 (1984) 20

Ferriso v. NLRB, 125 F.3d 865 (D.C. Cir. 1997) .... *passim*

Gwirtz v. Ohio Educ. Ass'n, 887 F.2d 678 (6th Cir. 1989), *cert. denied*, 494 U.S. 1080 (1990) 12

TABLE OF AUTHORITIES - CONTINUED

Page

Hohe v. Casey, 727 F. Supp. 163 (M.D. Pa. 1989),
aff'd in pertinent part, 956 F.2d 399 (3d Cir. 1992) .. 12, 16

Hudson v. Chicago Teachers Union,
922 F.2d 1306 (7th Cir. 1991), *cert. denied*,
501 U.S. 1230 (1991) 12

In re National Labor Relations Board,
936 F. Supp. 1091 (Jud. Pan. Mult. Lit. 1996) ..... ii, 4

IAM v. NLRB, 133 F.3d 1012 (7th Cir. 1998) 2, 4, 8, 9

IAM v. National Mediation Board,
930 F.2d 45 (D.C. Cir. 1991) 6

IAM v. National Railroad Passenger Corp.,
915 F.2d 43 (1st Cir. 1990) 6

IAM v. Northwest Airlines,
894 F.2d 998 (8th Cir. 1990) 6

IAM v. Transportes Aereos Mercantiles Pan Americanos,
924 F.2d 1005 (11th Cir. 1991) 6

International Federation of Flight Attendants v. Cooper,
154 L.R.R.M. 2253 (E.D. Mo. 1996),
further proceedings, 134 F.3d 917 (8th Cir. 1998) 6

International Longshoremen's Ass'n v. NLRB,
56 F.3d 205 (D.C. Cir. 1995) 23

TABLE OF AUTHORITIES - CONTINUED

Page

Iron Workers Local No. 433,
266 N.L.R.B. 154 (1983) 25

Kidwell v. TCIU, 946 F.2d 283 (4th Cir. 1991) 15

Laborers' Local Union No. 1168 (Work Services Corp.),
Case No. 16-CB-4316 (April 20, 1998) 9

Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992) 20

Lehnert v. Ferris Faculty Ass'n,
500 U.S. 507 (1991) ..... *passim*

Lehnert v. Ferris Faculty Ass'n,
707 F. Supp. 1473 (W.D. Mich. 1988) 16

Lehnert v. Ferris Faculty Ass'n,
556 F. Supp. 316 (1983) 12

Lowary v. Lexington Local Bd. of Educ.,
903 F.2d 422 (6th Cir. 1990), *cert. denied*,
498 U.S. 958 (1990) 13

Machinists v. Street, 367 U.S. 740 (1961) 18

Maislin Industries, U.S., Inc. v. Primary Steel, Inc.,
497 U.S. 116 (1990) 20

Marquez v. Screen Actors Guild, 124 F.3d 1034
(9th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3620
(U.S. Mar. 23, 1998) (No. 97-1056) 10

TABLE OF AUTHORITIES - CONTINUED

Page

McCullough v. Sociedad Nacional de Marineros,
372 U.S. 10 (1963) 23

Miller v. Air Line Pilots Ass'n,
108 F.3d 1415 (D.C. Cir. 1997) *cert. granted*,
66 U.S.L.W. 3385 (U.S. Nov. 26, 1997)
(No. 97-428) 10, 11, 12, 13

Mitchell v. Los Angeles Unified Sch. Dist.,
739 F. Supp. 511 (C.D. Cal. 1990), *rev'd*,
963 F.2d 258 (9th Cir. 1992), *cert. denied*,
506 U.S. 940 (1992) 12

Nielsen v. IAM, 94 F.3d 1107 (7th Cir. 1996) 11, 15

Paperworkers Local 620 (International Paper Co.), 309 N.L.R.B. 44 (1992) 25

Pilots Against Illegal Dues v. Air Line Pilots Ass'n,
938 F.2d 1123 (10th Cir. 1991) 17

Price v. UAW, 927 F.2d 88 (2d Cir. 1991),
cert. denied, 502 U.S. 905 (1991) 13

Railway Clerks v. Allen, 373 U.S. 113 (1963) 10

Reese v. City of Columbus, 71 F.3d 619
(6th Cir. 1996), *cert. denied*, ___ U.S. ___,
117 S. Ct. 386 (1996) 17

Strang v. Collyer, 710 F. Supp. 9 (D.D.C. 1989),
aff'd, 899 F.2d 1268 (D.C. Cir. 1990) 4

TABLE OF AUTHORITIES - CONTINUED

Page

Teamsters Local 166 (Dyncorp Support Services Operations), NLRB Case Nos. 31-CB-8333, 31-CB-8683 and 31-CB-8938 9

Television Artists-AFTRA (KGW Radio), NLRB Case No. 36-CB-1491 9

Tierney v. City of Toledo, 824 F.2d 1497 (1987), *further proceedings*, 917 F.2d 927 (6th Cir. 1990) 12, 16

Torrington Co., 305 N.L.R.B. 938 (1991) 25

United Mine Workers v. Pennington, 381 U.S. 657 (1965) 27

United States v. Arthur Young & Co., 465 U.S. 805 (1984) 14, 15

Windward Shipping (London), Ltd. v. American Radio Ass'n, 415 U.S. 104 (1974) 23

CONSTITUTIONAL and STATUTORY PROVISIONS AND RULES

U.S. Const. amend. I 11, 13, 18

28 U.S.C. § 1254(1) 2

28 U.S.C. § 2112 ..... ii, 4

TABLE OF AUTHORITIES - CONTINUED

Page

National Labor Relations Act,
29 U.S.C. § 141 *et seq.* 2
29 U.S.C. § 152(2) 23
29 U.S.C. § 152(3) 23
29 U.S.C. § 157 ..... 2, 3
29 U.S.C. § 158(a)(3) 2, 3, 18, 26
29 U.S.C. § 158(b)(1)(A) 2, 3
29 U.S.C. § 158(d) 25
29 U.S.C. § 159(a) 5, 24
29 U.S.C. § 159(b) 24
29 U.S.C. § 160(a)-(c) 3
29 U.S.C. § 160(b) 4
29 U.S.C. § 160(f) 4
29 U.S.C. § 164(b) 9, 22

Railway Labor Act,
45 U.S.C. § 151 *et seq.* ..... *passim*
45 U.S.C. § 152, Eleventh 18

Title VII, Civil Rights Act of 1964 20

U.S. Court of Appeals for the Seventh Circuit,
Rule 40(e) 8

MISCELLANEOUS AUTHORITIES

AFL-CIO Endorses Clinton, Approves $35 Million Political Program, Washington Post,
Mar. 26, 1996 10

TABLE OF AUTHORITIES - CONTINUED

Page

Congress Examining Options to End Nationwide Freight Rail Shutdown, Daily Labor Reporter (BNA), June 24, 1992 6

Federal Judge Blocks IAM From Using Aid From Flight Attendants' Leader, Daily Labor Reporter (BNA), Nov. 7, 1996 6

U.S. Labor Leader Seeks Union Support in Mexico, New York Times, Jan. 23, 1998 22

What Union Members Think, Washington Times, May 1, 1996 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No._____

ALAN STRANG et alia,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners Alan Strang, Richard A. Martin, Richard Dietrich, Thomas Gratz, Constance Downs, Darrold Kaestner, Charles Burnette, Bert Graham, Clarence Hull, William Koehly, Elizabeth S. Morehouse, Ronaele Joanne Findley, Melville James Arnot, James K. Humphreys, Leonard J. Kuhnlein, Denis McMahan, Donna M. Mendoza, Randall Sparks, James M. Sumter, Richard Price, Paul Sjotvedt, Randy D. Adams, Leah S. Harbison, Ruth Wright, Gene Dinsmore, Martha L. Payne, Mark V. Bluteau, David Mitchell and Lawrence Stone respectfully pray that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered on January 14, 1998.

OPINIONS BELOW

The court of appeals' decision appears in Appendix A ("App.") at 1a, *infra*. It is officially reported as *IAM v. NLRB*, 133 F.3d 1012 (7th Cir. 1998). The decision of the National Labor Relations Board (App. B at 13a) is officially reported as *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995). The decision of the administrative law judge (App. C at 143a) is reported at 320 N.L.R.B. 273.

JURISDICTION

The opinion and judgment of the court of appeals were entered on January 14, 1998. This Petition was originally due April 14, 1998. On March 17, 1998, Petitioners filed an Application for an Extension of Time to File this Petition. By Order dated March 19, 1998, Justice Stevens extended the time for the filing of this Petition until May 14, 1998.

This Court has jurisdiction to review the decision of the court of appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the National Labor Relations Act, 29 U.S.C. § 141 *et seq.* which are primarily involved in this case are 29 U.S.C. §§ 157, 158(a)(3) and 158(b)(1)(A). In pertinent part, these statutes state:

> § 157. **Right of employees as to organization, collective bargaining, etc.**
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected

by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

§ 158. **Unfair labor practices**
(a) Unfair labor practices for an employer
It shall be an unfair labor practice for an employer—

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such employment or the effective date of such agreement, whichever is the later.

(b) Unfair labor practices by labor organization
It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title:...

STATEMENT OF THE CASE

Jurisdiction Below: Petitioners Alan Strang *et alia* ("nonmembers") invoked the jurisdiction of the National Labor Relations Board ("NLRB" or "Board") under § 10 (a)-(c) of the National Labor Relations Act, ("NLRA"), 29 U.S.C. § 160 (a)-(c), which authorizes the Board to prevent unfair labor practices. Relying upon *CWA v. Beck*, 487 U.S. 735 (1988), the nonmembers filed several dozen unfair labor practice charges challenging the collection and use of their compulsory union dues by the International Association of Machinists and Aerospace Workers and its affiliates ("IAM") for political, ideological and

noncollective bargaining purposes. The nonmembers' unfair labor practice charges also challenged the use of their dues for union activities outside the United States, and outside their bargaining units (such as union expenses incurred for employees covered by the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*) After many years of delay, the NLRB General Counsel consolidated these many separate unfair labor practice cases, and issued a single nationwide complaint against the IAM and several of its local affiliates, pursuant to § 10(b) of the NLRA, 29 U.S.C. § 160(b).[2]

On May 29, 1992, after a lengthy nationwide trial (held in *inter alia* Hartford, Connecticut, Rosslyn, Virginia, and Sacramento, California), an administrative law judge of the NLRB issued a recommended decision. Timely exceptions and cross-exceptions were filed, and the Board issued its decision and order on December 20, 1995. *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995). That decision and order was a "final order" disposing of all issues. On February 1, 1996, the nonmembers filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit and invoked the jurisdiction of the court of appeals under § 10(f) of the NLRA, 29 U.S.C. § 160(f) (authorizing the filing of petitions for review by persons aggrieved by final decisions of the Board). As noted above, the petition for review was transferred to the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. § 2112. *In re National Labor Relations Board*, 936 F. Supp. 1091 (Jud. Pan. Mult. Lit. 1996). The decision of the Seventh Circuit over which review is now sought, *IAM v. NLRB*, 133 F.3d 1012 (7th Cir.), was issued on January 14, 1998.

Statement of the Facts and Proceedings Below: Petitioners ("nonmembers") are individual employees working for different employers in a wide variety of industries and geographic locations, including General Electric Medical Systems in Wisconsin, McDonnell-Douglas in California and Dynamic

---

[2] *See Strang v. Collyer*, 710 F. Supp. 9 (D.D.C. 1989), *aff'd*, 899 F.2d 1268 (D.C. Cir. 1990) (mandamus action filed against the NLRB General Counsel to hasten the consideration of these cases).

Controls in Connecticut. The nonmembers are all employed within bargaining units represented for purposes of collective bargaining by local and district affiliates of the IAM. (App. B at 32a; App. C at 145a-48a).

The IAM is an international labor union whose local and district affiliates represent employees in the United States and Canada, in a wide variety of occupations and employment classifications. (App. B at 32a; App. C at 158a-59a). Within the IAM hierarchy are approximately 1400 local "lodges" (the smallest organizational unit representing employees) and district "lodges." (App. B at 32a). Local lodges generally, and sometimes district lodges, are the actual entities that serve as the nonmembers' exclusive bargaining representatives, pursuant to § (9)(a) of the NLRA, 29 U.S.C. § 159(a). (App. B at 32a; App. C at 156a-57a).

District lodges are made up of two or more small local lodges within a geographic area or industry. In essence, the district lodges are "amalgamated" unions, typically representing employees in divergent industries and occupations, often under different labor statutes. Local and district lodges affiliated with the IAM represent employees under the NLRA, the RLA, the federal Civil Service Reform Act, state and local public sector labor acts, and Canadian labor acts. (App. B at 32a; App. C at 156a-57a; TR 211-16; CPT Exs. 4-9).[3]

In addition to representing the many NLRA-covered bargaining units directly involved in this case, the following list provides a small sample of the representational and litigation activities of the IAM and its affiliates under non-NLRA labor statutes:[4]

---

[3] "TR" refers to the transcript of the hearings before the ALJ. "CPT" refers to certain charging parties' exhibits introduced at the hearing. "RUX" refers to respondent unions' exhibits introduced at the hearing.

[4] This list of the IAM's non-NLRA bargaining units is far from exhaustive, serving merely as a sample. But the facts are clear: IAM

(continued...)

1) **Railway Labor Act**: IAM affiliates represent employees at Aeromexico, Swiss Air, United Air Lines, British Airways and Lufthansa German Airlines. (CPT Exs. 4, p. 9; 5, p. 2). *See generally IAM v. National Mediation Board*, 930 F.2d 45 (D.C. Cir. 1991); *IAM v. Transportes Aereos Mercantiles Pan Americanos*, 924 F.2d 1005 (11th Cir. 1991); *IAM v. National Railroad Passenger Corp.*, 915 F.2d 43 (1st Cir. 1990); *IAM v. Northwest Airlines*, 894 F.2d 998 (8th Cir. 1990).

2) **Federal Labor Relations Act**: IAM affiliates represent civilian employees of the United States Department of Defense's Trident (submarine) Refit Facility, and other civilian employees of the United States Navy. (CPT Exs. 5, p. 4; 8, p. 3).

3) **State labor statutes**: IAM affiliates represent public employees of the City of Long Beach, California and the Long Beach (California) Unified School District, and public employees of the City of Quincy, Illinois, among others. (CPT Exs. 5, p. 4; 9, p. 3).

4) **Canadian labor statutes**: IAM affiliates represent employees in many different bargaining units in Canada. (TR 215-16; CPT Ex. 6, p. 5).

---

[4](...continued)
expends a large amount of its time, money and energy on non-NLRA units that *per se* have nothing to do with representing any employees under the NLRA. *See, e.g., Congress Examining Options to End Nationwide Freight Rail Shutdown*, Daily Labor Reporter (BNA), June 25, 1992, describing the IAM's role as the leader of a multi-union coalition trying to bring the entire nationwide rail system to its knees by simultaneously striking against Conrail, Amtrak, CSX and many other RLA-covered employers.

For more recent activities, *see Federal Judge Blocks IAM From Using Aid From Flight Attendants' Leader*, Daily Labor Reporter (BNA), Nov. 7, 1996, related to the case of *International Federation of Flight Attendants v. Cooper*, 154 L.R.R.M. 2253 (E.D. Mo. 1996), *further proceedings*, 134 F.3d 917 (8th Cir. 1998). The *Cooper* litigation concerned the efforts of the IAM to convince flight attendants at Trans World Airlines to "jump ship" and join the IAM. The federal court in that case described the IAM's conduct as a "hostile raid against plaintiff IFFA."

As part of their "representation" of the nonmembers, the IAM's local and district affiliates negotiated union security clauses requiring all employees to join the unions or pay dues as a condition of employment. The nonmembers have all chosen to become or remain nonmembers of the IAM and its affiliates, and all object to supporting those unions' political, ideological and nonrepresentational activities. (App. B at 32a; App. C at 158a-59a).

When the nonmembers notified the unions of their objections to supporting political and nonrepresentational activities (under *CWA v. Beck*), the unions provided no financial disclosure information concerning each nonmember's own local or district affiliate. Instead, the IAM sent the nonmembers a sample of unaudited "summaries" from approximately ten of the thousands of other local and district IAM affiliates around the country. (App. B at 58a-63a; Joint Ex. 8).

These one-page local and district "summaries" were prepared by IAM members in good standing who are also full-time salaried employees of the IAM International, called "Grand Lodge Auditors." These "Grand Lodge Auditors" are selected by the IAM's Secretary-Treasurer, and their salaries are derived from the dues and agency fees of members and nonmembers. (App. B at 58a-63a; App. C at 219a-27a; TR 155-74).

Despite their titles, these "Grand Lodge Auditors" are neither licensed accountants nor certified public accountants. They receive little formal training in accounting. For example, one "Grand Lodge Auditor" testified that she received "three or four hours" of training on the agency fee chargeability issue; that she attended a two-day conference and a one-day meeting; and that she is unfamiliar with the term "generally accepted auditing standards." (App. B at 58a-63a; App. C at 219a-27a; TR 406, 411-12, 466).

On December 20, 1995, after several more years of delay, the NLRB issued its first post-*Beck* ruling—largely in favor of the IAM. *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995). The NLRB held that unions are not required to provide nonmem-

bers with financial disclosure independently audited by a certified public accountant. In so holding, the NLRB refused to follow this Court's decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306-08 & nn.17-18 (1986), which requires such independently audited financial disclosure out of "[b]asic considerations of fairness." *Id.* at 306. The Board held that "CPA certification is not required even under *Hudson*—which rather requires an 'independent auditor.'" (App. B at 61a n.85). The NLRB also found that the "summaries" of a small sampling of local and district expenditures provided adequate disclosure to the nonmembers. (App. B at 58a-63a; App. C at 209a-11a).

The NLRB also ruled that the IAM is permitted to charge nonmembers for litigation expenses incurred outside their particular bargaining unit, notwithstanding this Court's holding in *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984), that such expenses are nonchargeable under the Railway Labor Act. (App. B at 51a-55a). While the NLRB conceded that this Court in *Ellis* had provided "guidance" concerning the chargeability of extra-unit litigation expenses, the Board did not find itself bound by this guidance. (App. B at 23a-24a & n.25). Finally, the Board ruled that the IAM could charge nonmembers for its expenditures representing employees in unrelated bargaining units, including employees covered by foreign and public sector labor laws and the Railway Labor Act. (App. B at 49a-51a).

On January 14, 1998, the court of appeals upheld the Board's decision in its entirety. *IAM v. NLRB*, 133 F.3d 1012 (7th Cir. 1998) (App. A at 1a). The court held that unions covered by the NLRA are not required to provide nonmembers with a certified public accountant's independent audit of their financial statements. (App. A at 6a-8a). In so holding, the court expressly refused to follow the District of Columbia Circuit's contrary decision requiring such audits in *Ferriso v. NLRB*, 125 F.3d 865 (D.C. Cir. 1997). (App. A at 7a-8a). Indeed, because the panel recognized that it was creating a split in the circuits on this issue, it polled the entire Seventh Circuit under Circuit Rule 40(e), but no judges voted to grant rehearing. (App. A at 8a).

The court also agreed with the NLRB that nonmembers can be forced to pay for the unions' extra-unit litigation expenditures, without even mentioning this Court's holding in *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984), that such expenditures could only be charged to employees within the bargaining unit in which they were incurred. (App. A at 4a-5a). Finally, the court held that the IAM's allocation of chargeable versus nonchargeable expenses across the entire union structure, made without regard to the industry, bargaining unit, or nation in which the expenditures are made, is permissible in light of this Court's decision in *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991). (App. A at 4a-6a). This Petition follows.

REASONS FOR GRANTING THE WRIT

Although this case presents the NLRB's first effort to apply *CWA v. Beck*, 487 U.S. 735 (1988), it has already engendered a split in the circuits, thus warranting this Court's review to insure uniformity of decisions arising under the NLRA, our nation's basic labor law. *Compare* the instant case, *IAM v. NLRB*, 133 F.3d 1012, 1016-18 (7th Cir. 1998) (App. A at 6a-8a) with *Ferriso v. NLRB*, 125 F.3d 865, 868-72 (D.C. Cir. 1997). Just last month the NLRB remanded a similar case to an administrative law judge for additional fact-finding, expressly recognizing its difficulty in reconciling these conflicting circuit precedents. NLRB Order in *Laborers' Local Union No. 1168 (Work Services Corp.)*, Case No. 16-CB-4316 (April 20, 1998). Similar issues are presented in several other pending NLRB cases, thus necessitating a ruling by this Court to provide guidance to the Board, the parties, and the lower courts. *See, e.g., Teamsters Local 166 (Dyncorp Support Services Operations)*, Case Nos. 31-CB-8333, 31-CB-8683, and 31-CB-8938; *Television Artists-AFTRA (KGW Radio)*, Case No. 36-CB-1491.

While § 14(b) of the Act, 29 U.S.C. § 164(b), permits states to proscribe compulsory "union security" arrangements, twenty-nine states covering two-thirds of the United States population have not elected to do so. In the twenty-nine states that permit union security arrangements, most NLRA-covered collective

bargaining agreements, covering millions of workers, contain such arrangements. Since increasing numbers of employees are learning about, and exercising, their right to refrain from supporting the political and non-bargaining agendas of international labor unions, the issues raised by this case grow more important each day. *See CWA v. Beck*, 487 U.S. 735 (1988); *Miller v. Air Line Pilots Ass'n*, 108 F.3d 1415 (D.C. Cir. 1997), *cert. granted*, 66 U.S.L.W. 3385 (U.S. Nov. 26, 1997) (No. 97-428); *Marquez v. Screen Actors Guild*, 124 F.3d 1034 (9th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3620 (U.S. Mar. 23, 1998) (No. 97-1056); *see also AFL-CIO Endorses Clinton, Approves $35 Million Political Program*, Washington Post, Mar. 26, 1996; *What Union Members Think*, Washington Times, May 1, 1996 (poll by Luntz Research reveals that 40% of union members vote for Republicans and 62% of union members oppose the use of their funds for the AFL-CIO's political campaigns).

QUESTION 1: THE COURTS OF APPEALS HAVE DIVIDED ON THE ISSUE OF WHETHER UNIONS MUST PROVIDE NONMEMBERS WITH FINANCIAL STATEMENTS AUDITED BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, TO EXPLAIN AND JUSTIFY THEIR REDUCED FEE CALCULATIONS. THIS COURT SHOULD RESOLVE THE SPLIT IN THE CIRCUITS.

The issue that has divided the federal courts is the following: must unions covered by the NLRA provide nonmembers with financial statements audited by an independent certified public accountant, just as unions operating in the public sector must do under *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306-08 & nn.17-18 (1986)? Compare the opinion below, which specifically refused to follow the D.C. Circuit (App. A at 6a-8a), with *Ferriso v. NLRB*, 125 F.3d 865, 868-72 (D.C. Cir. 1997), which repeatedly criticized *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995).

In *Hudson*, this Court held that "basic considerations of fairness ... dictate that the potential objectors be given sufficient

information to gauge the propriety of the union's fee." The Court further held that "adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor*." *Id.* at 307 n.18 (emphasis added). In so holding, the Court recognized that nonmembers were entitled to "verified" and "audited" financial disclosure—prior to any agency fee collections—in order to give them a fair chance to protect their statutory and constitutional rights to refrain from supporting causes and candidates they abhor. *Id.*

Pre-collection independent verification of union financial statements is an important part of the due process safeguards necessary to protect nonmembers from excessive and unlawful fee seizures. *Id.* at 303 n.12 ("Procedural safeguards often have a special bite in the First Amendment context.... The purpose of these safeguards is to insure that the government treads with sensitivity in areas freighted with First Amendment concerns"). These procedural safeguards are necessary whenever a union compels nonmembers to pay an agency fee, regardless of whether the union's coercive power arises from a public or private sector labor statute. *Miller*, 108 F.3d at 1420 ("we see no reason why this statutory duty of fair representation owed to nonmember agency shop employees carries any fewer procedural obligations than does a constitutional duty"); *Nielsen v. IAM*, 94 F.3d 1107, 1113 (7th Cir. 1996) (the procedural protections mandated by *Hudson* "have come to be recognized as appropriate for *Beck* cases as well").

Recognizing this, the Court has required all unions to adequately disclose their financial records, and bear the burden of proving their reduced fee calculations. "Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion." *Hudson*, 475 U.S. at 306, *quoting Abood v. Detroit Board of Education*, 431 U.S. 209, 239-40 n.40 (1977), and *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963); *see also Bromley v. Michigan Educ. Ass'n*, 82 F.3d 686, 692-95 (6th Cir. 1996) (instructing the district court to allow extensive discovery of a

union's financial records), *cert. denied*, ___ U.S. ___, 117 S. Ct. 682 (1997); *Miller*, 108 F.3d at 1423-25 (recognizing the need for independent audits meeting a high degree of "professional adequacy"); *Lehnert v. Ferris Faculty Ass'n*, 556 F. Supp. 316 (1983) (denying request for a protective order to stop broad discovery of a union's financial records). In *Hudson*, this Court understood that objecting nonmembers would be unable to assert and protect their rights unless unions provided independently audited financial disclosure in advance of any collections. *Id.* at 306.

There is also a very practical reason to require unions to provide financial disclosure that has been verified by an independent certified public accountant: employees receiving such reliable and trustworthy information have less need to mount federal court challenges to the union's fee calculation. *Miller*, 108 F.3d at 1421-24; *Tierney v. City of Toledo*, 917 F.2d 927, 938 n.9 (6th Cir. 1990).

Applying these principles, the vast majority of lower courts have interpreted *Hudson*'s "verification by an independent auditor" requirement to mean that an independent certified public accountant must audit the financial statements of each level of the union hierarchy that receives part of the fee, for only then can nonmembers have a fair basis to rely upon—or challenge—the union's calculations. *Ferriso*, 125 F.3d at 869-70 ("We are persuaded that nonmembers cannot make a reliable decision as to whether to contest their agency fees without trustworthy information about the basis of the union's fee calculations"); *Hudson v. Chicago Teachers Union*, 922 F.2d 1306, 1315-16 (7th Cir. 1991), *cert. denied*, 501 U.S. 1230 (1991); *Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6th Cir. 1987), *further proceedings*, 917 F.2d 927, 934-37 (6th Cir. 1990); *Dashiell v. Montgomery Cty.*, 925 F.2d 750, 756 (4th Cir. 1991); *Gwirtz v. Ohio Educ. Ass'n*, 887 F.2d 678 (6th Cir. 1989), *cert. denied*, 494 U.S. 1080 (1990); *Hohe v. Casey*, 727 F. Supp. 163, 166-67 (M.D. Pa. 1989), *aff'd in pertinent part*, 956 F.2d 399, 415 & n.9 (3d Cir. 1992); *Mitchell v. Los Angeles Unified Sch. Dist.*, 739 F. Supp. 511, 514-15 (C.D. Cal. 1990), *rev'd on other grounds*, 963 F.2d 258 (9th Cir. 1992), *cert. denied*, 506 U.S. 940 (1992);

Lowary v. Lexington Local Bd. of Educ., 903 F.2d 422, 430-32 (6th Cir. 1990), *cert. denied*, 498 U. S. 958 (1990) (union's use of a "local presumption" held unlawful, in part because no financial disclosure was provided to nonmembers); *see also Beck v. CWA*, 114 L.R.R.M. 2523, 2524 (D. Md. 1983); *but see Price v. UAW*, 927 F.2d 88 (2d Cir. 1991), *cert. denied*, 502 U.S. 905 (1991).

In contrast, the court below held that unions operating under the NLRA are *not* required to provide nonmembers with financial statements audited by independent certified public accountants. While the court agreed that some form of an "independent audit" is required of public sector unions under *Chicago Teachers Union v. Hudson*, (App. A at 7a-8a), it distinguished this case from *Hudson* by stating that "Hudson was a constitutional case; it involved the First Amendment rights of public employees, not the statutory rights of workers covered by the National Labor Relations Act." (App. A at 7a).

But even the court below recognized the weakness of this distinction, stating that "It is not obvious why this should make a difference, however; in either case the worker is entitled to reliable information about the costs of representation, which are the only costs that he is legally obligated to pay." (App. A at 7a). Indeed, it should not make a difference, for this Court recognized in *Abood v. Detroit Board of Education*, 431 U.S. 209, 230 (1977) that "[t]he very real differences between exclusive-agent collective bargaining in the public and private sectors are not such as to work any greater infringement upon the interests of public employees." The Court also stated that "[t]he differences between public and private sector collective bargaining *simply do not translate into differences in First Amendment rights.*" *Id.* at 232 (emphasis added). *See also Miller*, 108 F.3d at 1420 (same).

Ultimately, the court below held such audits unnecessary under the NLRA, asserting that "*Hudson* does not specify what an 'independent' audit means. It does not say that the auditor must be a CPA or have no affiliation with the union." (App. A at 7a). But *Hudson* teaches precisely that unions are required to

procure independent audits by certified public accountants before seizing agency fees from nonmembers. *See* 475 U.S. at 306-08.

Hudson itself used the term "verification by an independent auditor" interchangeably with the term "certified public accountant," absolutely undermining the claim of the Board and the court below that this Court never required audits by independent certified public accountants. *See Hudson*, 475 U.S. at 310 ("If, for example, the original disclosure by the union had included a certified public accountant's verification of expenditures...."). It is difficult—if not impossible—to see how a paid employee-member of the IAM could be considered "independent."

Indeed, when this Court decided *Hudson*, it understood the nature and purpose of independent certified public accountants' audits: to provide assurance to the users of the financial statements (in this case, the nonmembers) that the information is reliable. Just two terms before *Hudson*, in *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984), this Court analyzed the role of certified public accountants, and described it as follows:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with his client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

Id. at 817-18 (emphasis in original). When it decided *Hudson* two terms later, this Court undoubtedly meant for these same principles of independence and public trust to apply to any "auditors" given the task of "verifying" union statements of chargeable versus nonchargeable expenditures. In fact, *only* independent certified public accountants can fulfill this role, as

the IAM's "Grand Lodge Auditors" have no public responsibilities or independence and owe their allegiance to the IAM and its constitution—not to nonmember agency fee payors or the public. Nevertheless, both the Board and the lower court ruled that the "summaries" prepared by the "Grand Lodge Auditors" constituted adequate financial disclosure, and that nonmembers can either accept them as a proper basis for the reduced fee calculation or file a lawsuit to challenge the proper amount of the fee.

In ruling that union financial disclosure need not be audited by independent certified public accountants, the court below explicitly recognized that it was creating a split in the circuits on this issue, citing the District of Columbia Circuit's decision in *Ferriso v. NLRB*, 125 F.3d 865 (1997). (App. A at 8a). In *Ferriso*, the D.C. Circuit scrutinized the Board's decision in this very case, *California Saw & Knife Works*, and described as "not rational" the Board's rejection of the independent auditor requirement, because:

> any rational interpretation of the NLRA's duty of fair representation will necessarily include an independent-auditor requirement.... We are persuaded that nonmembers cannot make a reliable decision as to whether to contest their agency fees without trustworthy information about the basis of the union's fee calculations.

125 F.3d at 869-70. In contrast to the court below, the *Ferriso* court found it "unlikely" that the IAM's "Grand Lodge Auditors" could ever qualify as "independent" under any reasonable definition of that term. *Id.* at 872; *see also Arthur Young & Co.*, 465 U.S. at 817-19.

The D.C. Circuit's holding in *Ferriso* mirrors the holdings of several courts of appeals—including the Seventh Circuit itself —that the procedural protections mandated by *Hudson* "have come to be recognized as appropriate for *Beck* cases as well." *Nielsen v. IAM*, 94 F.3d 1107, 1113 (7th Cir. 1996), citing *Abrams v. CWA*, 59 F.3d 1373, 1377, 1380 (D.C. Cir. 1995), *Kidwell v. TCIU*, 946 F.2d 283, 294 (4th Cir. 1991) and *Crawford v. Air Line Pilots Ass'n*, 992 F.2d 1295, 1301 (4th Cir.

1993). But standing almost alone, the Board and the court below insist on providing private sector unions with exceptions to *Hudson*'s procedural ("fairness") requirements.

In short, "verification" of union expenditures "*by a local association officer* does not satisfy the requirement that expenditures be verified by an independent auditor." *Lehnert v. Ferris Faculty Ass'n*, 707 F. Supp. 1473, 1480 (W.D. Mich. 1988) (motion to dissolve injunction denied). *Hudson* required "that detailed financial information concerning all major categories of union expenses, including those for payments made to affiliated unions, be audited by a certified public accountant independent of the union." *Tierney*, 824 F.2d at 1506. Only such an audit would provide nonmembers "any reassurance concerning the allocation of costs." *Hohe*, 727 F. Supp. at 167; *see also Ferriso*, 125 F.3d at 869-72; *Abrams*, 59 F.3d at 1381.

This Court should resolve the conflict in the circuits, and ensure that nonmembers forced to pay agency fees under the aegis of the NLRA receive independently audited financial disclosure, just as public sector employees do under *Chicago Teachers Union v. Hudson*.

QUESTION 2: IN *ELLIS v. RAILWAY CLERKS*, THIS COURT RULED THAT NONMEMBERS COVERED BY THE RAILWAY LABOR ACT CANNOT BE FORCED TO PAY FOR UNION LITIGATION EXPENSES INCURRED OUTSIDE THEIR BARGAINING UNIT. THE IDENTICAL PRINCIPLES APPLY UNDER THE NATIONAL LABOR RELATIONS ACT.

The issue here concerns the Board's refusal to follow this Court's unanimous decision under the Railway Labor Act in *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984).

More specifically, *Ellis* held that nonmembers need pay only for union litigation "that concerns bargaining unit employees," finding that "[t]he expenses of litigation not having such a

connection with the bargaining unit are not to be charged to objecting employees." Since *Ellis*, the vast majority of courts have held the expenses of extra-unit litigation to be nonchargeable. *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 528 (1991) (plurality opinion); *Pilots Against Illegal Dues v. Air Line Pilots Ass'n*, 938 F.2d 1123, 1130-31 & n.4 (10th Cir. 1991); *Crawford v. Air Line Pilots Ass'n*, 992 F.2d at 1316 (*en banc*) (Russell, J., dissenting);[5] *Albro v. Indianapolis Educ. Ass'n*, 585 N.E.2d 666 (Ind. App.), *adopted sub nom. Fort Wayne Educ. Ass'n v. Aldrich*, 594 N.E.2d 781 (Ind. 1992); *Browne v. Wisconsin Employment Relations Comm'n*, 485 N.W.2d 376, 388 (Wis. 1992); *but see Reese v. City of Columbus*, 71 F.3d 619, 623-24 (6th Cir. 1996), *cert. denied*, ___ U. S. ___, 117 S. Ct. 386 (1996).

A majority of the Board disagreed. The Board majority conceded that *Ellis* provided germaneness "guidance" on the chargeability of extra-unit litigation, but nevertheless refused to follow this "guidance," claiming that *Ellis* was based upon "constitutional considerations." (App. B at 52a). Member Cohen dissented, reasoning that, since this Court in *Ellis* had found such extra-unit litigation expenditures to be nonchargeable under the nearly identical provisions of the RLA, the Board could not escape this precedent by simply asserting that the RLA is a "different" statute. (App B at 21a n.19; App. B at 55 n.78). The court below acquiesced in the Board majority's treatment of extra-unit litigation, failing to mention *Ellis'* unanimous holding on this issue and cryptically observing that litigation is "analytically identical" to all other bargaining-related costs. (App. A at 4a).

In contrast to the Board and the court below, this Court in *CWA v. Beck* held itself bound by *Ellis* and several decades of prior cases decided under the Railway Labor Act:

---

[5] In *Crawford*, the majority of the *en banc* Fourth Circuit did not reach the "extra-unit litigation" issue, 992 F.2d at 1301, but a five-member minority did, and held all extra-unit litigation to be nonchargeable. *See* 992 F.2d at 1316.

> Our decision in *[Machinists v.] Street*, [367 U.S. 740 (1961)] is far more than merely instructive here: we believe it is controlling, for § 8(a)(3) and § 2, Eleventh are in all material respects identical. Indeed, we have previously described the two provisions as 'statutory equivalents,' *Ellis v. Railway Clerks*, 466 U.S. 435, 452, n.13 (1984).... In these circumstances, we think it clear that Congress intended the same language to have the same meaning in both statutes.

487 U.S. at 745-46. Thus, *stare decisis* and principles of statutory construction mandate that this Court's decisions under the Railway Labor Act are determinative of the same issues arising under the NLRA—its "statutory equivalent."

In refusing to follow *Ellis*, the Board majority relied upon Justice Blackmun's statement in *Lehnert v. Ferris Faculty Association*, 500 U.S. at 528 (plurality opinion), that "the Court in *Ellis* determined that the RLA, as informed by the First Amendment, prohibits the use of dissenters' fees for extra-unit litigation." (App. B at 52a). However, Justice Blackmun's comment notwithstanding, *Ellis'* holding concerning extra-unit litigation does not mention First Amendment concerns at all. *See* 466 U.S. at 453. More important, *Ellis* held extra-unit litigation nonchargeable in the portion of the opinion in which the Court "inquire[d] whether *the statute* permits the union to charge petitioners for any of the challenged expenditures," *id.* at 445 (emphasis added), not the portion in which the Court addressed First Amendment concerns, at 455-57; *see also Lehnert*, 500 U.S. at 555 ("*Ellis* and *Beck* were statutory cases, but there is good reason to treat them as merely reflecting the constitutional rule") (Scalia, J., concurring in part and dissenting in part).

Thus, without undertaking any analysis of the union's actual litigation expenditures, the Board required nonmembers to fund an amorphous class of extra-unit litigation under the theory that "union litigation of issues arising in connection with collective-bargaining agreements may confer benefits on employees beyond those units immediately affected." (App. B at 54a). But *Ellis* and *Lehnert* absolutely undercut the Board's theory. As Justice Blackmun's plurality opinion in *Lehnert* explained, while

"precedent established through litigation on behalf of one unit may ultimately be of some use to another unit," when "unrelated to an objecting employee's unit, such activities are not germane to the union's duties as exclusive bargaining representative." 500 U.S. at 528.

In this case, the IAM charged nonmembers for more than $3.3 million of its extra-unit litigation, and conceded that only $159,900 was nonchargeable. (RUX 1, tab 13 ¶¶ 126-29 & Schedule 12). Among the "chargeable" litigation expenditures implicitly upheld by the Board were: Department of Transportation route transfer proceedings concerning Aeromexico; bankruptcy litigation concerning NLRA and RLA units; tort cases seeking damages for picket line violence arising in other units; National Mediation Board election procedures; a suit against the Secretary of the Navy over his decision to award a contract to a private employer; defense of a sex discrimination suit; and more than $580,000 spent in litigation over the Eastern Air Lines strike (and secondary boycott litigation, injunctions and bankruptcy cases related to that strike). *Id.*

Although the NLRB majority blithely accepted the union's claim that this mass of union litigation expenses is "collective bargaining related," much of the $3.3 million dollars that IAM claimed as chargeable was spent on general litigation—often under the Railway Labor Act—which can never relate to Alan Strang and the other Petitioners here. This is precisely the type of general litigation *Ellis* held to be nonchargeable. *See* 466 U.S. at 453.

Thus, the Board's theory—that "union litigation of issues arising in connection with collective-bargaining agreements may confer benefits on employees beyond those units immediately affected" (App. B at 52a)—is directly contrary to *Ellis*. In *Ellis*, one of the specific types of extra-unit litigation held nonchargeable was "litigation seeking to protect the rights of airline employees generally during bankruptcy proceedings." 466 U.S. at 453. That litigation was "intervention in an employer's bankruptcy proceedings [that] protected the union members' wages and ensured continued compliance with the collective

bargaining agreement while the employer underwent reorganization." *Ellis v. Railway Clerks*, 685 F.2d 1065, 1074 (9th Cir. 1982), *rev'd in pertinent part*, 466 U.S. 435, 453 (1984). This Court held the bankruptcy litigation nonchargeable even though it arose in direct connection with the collective bargaining agreement in a unit other than that of the objecting nonmembers.[6]

In short, the Board majority's and court of appeals' rejection of *Ellis* cannot be countenanced by this Court. While the Board has some "leeway" in interpreting the NLRA when the law is unsettled, that "leeway" does not extend to baldly rejecting Supreme Court precedents and their underlying rationales. As this Court has said in an analogous context: "Once we have determined a statute's clear meaning, we adhere to that determination under the doctrine of *stare decisis* and we judge an agency's later interpretation of the statute against our prior determination of the statute's meaning." *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536-37 (1992), *citing Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 131 (1990). Because *Beck* held that the limits of compulsory unionism under the NLRA are "identical" to those imposed by the RLA, 487 U.S. at 745-46, the Board majority and the court below were not empowered to reject this Court's clear ruling that litigation outside the nonmember's bargaining unit is nonchargeable. *Ellis*, 466 U.S. at 453. The petition should be granted to ensure that the nation's labor laws are interpreted with consistency and uniformity.

---

[6] Moreover, "defending suits alleging violation of the nondiscrimination requirements of Title VII of the Civil Rights Act of 1964" is arguably "a normal incident of the duties of the exclusive representative," but such litigation was also held nonchargeable in *Ellis* unless the nonmembers' own "bargaining unit is directly involved." 466 U.S. at 453.

QUESTION 3: CONGRESS DID NOT INTEND TO FORCE NONMEMBERS COVERED BY THE NLRA TO SUBSIDIZE UNION ACTIVITIES IN UNRELATED BARGAINING UNITS AND INDUSTRIES, AND BARGAINING UNITS COVERED BY PUBLIC SECTOR LABOR LAWS AND CANADIAN LABOR LAWS.

A. The National Labor Relations Board Only Oversees Private Sector Labor Relations Arising Under the National Labor Relations Act. The Board Has No Authority to Require Nonmembers to Support Non-NLRA Activities.

This case also raises a fundamental question about the scope and extraterritorial reach (if any) of the National Labor Relations Act. The issue is whether Congress intended to require nonmembers in a bargaining unit covered by the NLRA to contribute to union expenditures made on behalf of employees in foreign nations, employees of federal, state and local governments, and employees working in completely unrelated industries—including those covered by the Railway Labor Act. The Board and the court below held that Congress intended to allow international labor unions (like the IAM) to force objecting nonmembers to pay for such activities, relying upon *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991) as the basis for upholding such "cross-unit agglomeration." *See also CWA Local 9403 (Pacific Bell)*, 322 N.L.R.B. 142, 144 (1996), *petition for review denied sub nom. Finerty v. NLRB*, 113 F.3d 1288, 1291-92 (D.C. Cir.), *cert. denied*, ___ U.S. ___, 118 S.Ct. 558 (1997). According to the court of appeals, the IAM's allocation of chargeable versus nonchargeable expenses across the entire union structure, made without regard to the industry, bargaining unit, or country in which the expenditures are made, is "the lesser of two evils" (the other being the difficulty that the IAM might face in apportioning its expenses accurately). (App. A at 5a-6a).

The Board and the court of appeals erred in expanding the reach of the NLRA, for nothing in that statute evidences a congressional intent to force NLRA-covered American workers

to fund collectivism in foreign nations, among public sector employees, and among employees covered by the Railway Labor Act. The Board overstepped its statutory bounds in this case, failing to remember that it was established to oversee the National Labor Relations Act and private sector labor relations under that particular statutory scheme, not all unions operating under all labor statutes. The Board does not oversee labor relations under the RLA, state public sector labor laws, or Canadian labor laws. Yet that is the thrust of the Board's decision—that Alan Strang, who works for General Electric Medical Systems in Milwaukee under the NLRA, must support the IAM's labor relations activities governed by the RLA, public sector labor laws, and other countries' labor laws, or face discharge.

While the Board may be charged with ensuring "labor peace" under the NLRA, this mandate does not extend to ensuring "labor peace" in foreign nations with Alan Strang's compelled agency fees. Moreover, while the Board may also be charged with eliminating so-called "free riders" under the NLRA (in the twenty-nine states that have failed to forbid compulsory unionism under 29 U.S.C. § 164(b)), Alan Strang is not a "free rider" when he is willing to fund the negotiation and administration of his own contract, but declines to voluntarily fund the negotiation of contracts for foreign workers, public employees in California, airline workers who reside a continent away from him, or even NLRA-covered employees in unrelated bargaining units and industries.

If the Board's decision allowing the chargeability of worldwide extra-unit "bargaining" activity is not reversed, then the NLRA contains few realistic limits on what a nonmember may be charged. Under those circumstances, the IAM (and every other international union) will be free to charge NLRA-covered employees in the United States for activities in "branch offices" in Mexico, Israel, Estonia, Indonesia and any other country they choose! *See U.S. Labor Leader Seeks Union Support in Mexico*, New York Times, Jan. 23, 1998. But Congress did not enact the NLRA to "unite the workers of the world," or to unite American public sector employees with their

private sector counterparts. *See* 29 U.S.C. § 152(2) and (3) (excluding political subdivisions and their employees from the reach of the NLRA); *see generally Ellis*, 466 U.S. at 451 (holding "organizing" efforts aimed at other bargaining units nonchargeable, even where they allegedly "strengthen" the union).

Moreover, the Board and the court below glossed over the fact that the IAM is charging American workers for its activities in support of foreign bargaining units covered by foreign labor laws. In doing so, they failed to recognize the well-settled law that the NLRA has no extraterritorial effect, because the rights and duties created by the statute are limited solely to domestic employers and employees.

For example, this Court has held that the NLRA does not cover foreign workers who are employed on a foreign-owned vessel, even when temporarily present in an American port. *McCullough v. Sociedad Nacional de Marineros*, 372 U.S. 10 (1963). Further, the NLRA does not cover picketing by an American labor union at an American port where such picketing is aimed at altering the employment relationship between owners of foreign vessels and foreign seamen. *American Radio Ass'n v. Mobile S.S. Ass'n, Inc.*, 419 U.S. 215 (1974); *Windward Shipping (London), Ltd. v. American Radio Ass'n*, 415 U.S. 104 (1974); *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 142-46 (1957).

The courts of appeals have recognized these principles in several NLRA cases, *see e.g., International Longshoremen's Ass'n v. NLRB*, 56 F.3d 205, 210 (D.C. Cir. 1995) and *Dowd v. International Longshoremen's Ass'n*, 781 F. Supp. 1565 (M.D. Fla. 1991), *aff'd*, 975 F.2d 779 (11th Cir. 1992), but the court below failed to recognize them here when it required American workers to subsidize the IAM's expenses representing Canadian bargaining units. As such, the Board and the court below badly misread the nation's basic labor law, and this Court should correct this grievous error affecting millions of employees.

B. The Rights and Duties Created by the NLRA Are Based Upon the Existence of Discrete and Clearly Defined Bargaining Units. The Board and the Court Below Erred When They Allowed the IAM to Ignore These "Bargaining Unit" Limitations at Will.

The Board and the court below disregarded the structure and policy of the NLRA, which mandates that nonmembers be charged only for the activities that relate to their bargaining unit. This "bargaining unit standard of chargeability" is enshrined in the plain language of the NLRA itself, is part and parcel of the Board's effectuation of the Act through all types of election and unfair labor practice procedures, and is uniformly applied in Board decisions and court cases. By abandoning the bargaining unit concept solely in cases where individual employees object to funding nonrepresentational activities (under *CWA v. Beck*), the Board and the court below have flatly ignored the plain language of the Act, and taken a position at odds with longstanding Board and court decisions concerning the importance of identified and discrete bargaining units.

The Act itself is the departure point for the correct analysis of the "bargaining unit standard of chargeability":

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees *in a unit appropriate for such purposes*, shall be the exclusive representatives of all the employees *in such unit* for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

NLRA, § 9(a), 29 U.S.C. § 159(a) (emphasis added).

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the *unit appropriate for the purposes of collective bargaining* shall be the employer unit, craft unit, plant unit, or subdivision thereof . . . .

NLRA, § 9(b), 29 U.S.C. § 159(b) (emphasis added).

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of *the employer* and the representative of *the employees* to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . .

NLRA, § 8(d), 29 U.S.C. § 158(d) (emphasis added).

The statute, 29 U.S.C. § 158(d), does not define "collective bargaining" as the obligation of *any* and *every* union to bargain with *any* and *every* employer (including those operating under the RLA, public sector, or Canadian labor laws). Only when a union has certification rights for a specific and defined unit of employees can it demand that an employer bargain.

An example of how the NLRB properly applies this principle—when it wants to—is shown in *Paperworkers Local 620 (International Paper Co.)*, 309 N.L.R.B. 44 (1992), where the NLRB struck down a "pooled" voting system which allowed the employees in one bargaining unit to veto the contract ratification decisions made by employees in a different unit.

> The pool runs afoul of the Act ... because its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit's contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit's contract.

Id. at 45; *see also Torrington Co.*, 305 N.L.R.B. 938 (1991) (company not obliged to bargain over the elimination of health care benefits for non-unit employees); *Iron Workers Local No. 433*, 266 N.L.R.B. 154, 157 (1983) (unions cannot lawfully require employee to satisfy a dues arrearage incurred in one bargaining unit as a condition of employment in a different unit). The NLRB should have applied these same considerations—but did not—when it permitted the IAM to force Alan Strang, as a condition of his employment with General Electric Medical

Systems, to support far-flung union activities occurring in other bargaining units, many covered by other labor statutes.

In addition to the face of the Act itself, this Court's cases confirm that the "bargaining unit" concept is at the heart of the structure of the NLRA. In *Allied Chemical & Alkali Workers, Local 1 v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971), the Court held that retirees' health benefits were not a mandatory subject of bargaining because those retirees were outside the relevant bargaining unit:

> Together, these provisions establish the obligation of the employer to bargain collectively, "with respect to wages, hours, and other terms and conditions of employment," with "the representatives of his employees" designated or selected by a majority "in a unit appropriate for such purposes." This obligation extends only to the "terms and conditions of employment" of the employer's "employees" in the "unit appropriate for such purposes" that the union represents.

Id. at 164.

Nowhere in the history of the NLRA is there any evidence that an amorphous class of foreign, public sector, and railroad workers—whose only connection to Alan Strang and the other nonmembers is the random "fortuity" that their separately certified local collective bargaining representative turned out to be affiliated with the same international labor union—is to be given the benefit of the dues extracted from Alan Strang and the other nonmembers solely because of the coercive power granted by § 8(a)(3) of the NLRA. "[T]he Board's powers in respect of unit determinations are not without limits, and if its decision oversteps the law it must be reversed." *Pittsburgh Plate Glass*, 404 U.S. at 171 (citations omitted).

In a similar vein, this Court has recognized the tension inherent in a union's representation of employees of competing employers, and stated federal labor policy this way:

> [T]here is nothing in the labor policy [of the United States] indicating that the union and the employers in one bargaining unit are free to bargain about the wages, hours, and working conditions of other bargaining units or to attempt to settle those matters for the entire industry. On the contrary, *the duty to bargain unit by unit* leads to a quite different conclusion. The union's obligation to its members would seem best served if the union retained the ability to respond to each bargaining situation as the individual circumstances might warrant without being straight-jacketed by some prior agreement with the favored employers.

United Mine Workers v. Pennington, 381 U.S. 657, 666-68 (1965) (emphasis added).

Simply stated, the collective activities of airline employees, Canadian employees, and public sector employees do not affect the terms and conditions of employment of NLRA-covered employees like Alan Strang. Thus, to be a proper subject of bargaining under the NLRA—and a proper basis for lawfully discharging nonmembers if they fail to subsidize that activity—an activity must relate to the specifically defined bargaining unit. This Court should grant the petition and ensure a proper and limited interpretation of the NLRA.

CONCLUSION

This Petition should be granted on all issues and the case should be scheduled for full briefing and argument.

Respectfully submitted,

Glenn M. Taubman
Counsel of Record for Petitioners
c/o National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

May 1998

Supreme Court, U.S.
FILED

No. 97-___ 97 18 32 MAY 13 1998

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG *et alia*,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

GLENN M. TAUBMAN
Counsel of Record for
Petitioners
c/o National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

May 1998

332 pp

TABLE OF CONTENTS

Page

Opinion of the United States Court of Appeals for the Seventh Circuit, issued January 14, 1998 ..... 1a

Decision and Order of the National Labor Relations Board, issued December 20, 1995 ..... 13a

Decision of the Administrative Law Judge, issued May 29, 1992 ..... 143a

APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

January 14, 1998

[133 F.3d 1012]

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, et al., Petitioners, Cross-Respondents,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent, Cross-Petitioner,

Alan Strang, et al., Intervenors,

Nos. 96-1246, 96-2928 and 96-3467.

United States Court of Appeals, Seventh Circuit.

Argued Oct. 23, 1997.
Decided Jan. 14, 1998.

* * * *

[1014]Before POSNER, Chief Judge, RIPPLE and EVANS, Circuit Judges.

POSNER, Chief Judge.

We have before us cross-petitions to set aside and to enforce an order by the National Labor Relations Board specifying certain procedures that the machinists' union must or may follow in order to protect the rights of union nonmembers whom the union and its locals represent in collective bargaining with employers. A bit of history will bring the issues into focus. Section 8(a)(3) of the National Labor Relations Act contains a proviso permitting the parties to a collective bargaining agreement to include a "union shop" clause: the employer agrees to require as a condition of employment that the employees in the bargaining unit join the union within thirty days after the collective bargaining agreement goes into effect or, if the employee is hired after the agreement is already in force, within thirty days after he's hired. The Act does not say that the employee thus forced to join the union as a condition of keeping his job can either resign from the union if he objects to the union's political activities or withhold any portion of his dues

that is not being used to finance the union's activities on behalf of the members of the bargaining unit. But in dealing with statutes that either regulate public employment or forbid states to ban the union shop (that is, forbid "right to work" laws), and so in either case are taken to place the power of government behind the terms of employment, the Supreme Court has long held that the First Amendment, and so the statutes themselves when interpreted to avoid violating the First Amendment, forbid the employer to require the employee either to remain a union member or to pay any part of the dues that is used to support the union's political activities. *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977); *International Ass'n of Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961); see also *Lehnert v. Ferris Fac[1015]ulty Ass'n*, 500 U.S. 507, 111 S.Ct. 1950, 114 L.Ed.2d 572 (1991); *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986); *Ellis v. Brotherhood of Railway, Airline & Steamship Clerks*, 466 U.S. 435, 104 S.Ct. 1883, 80 L.Ed.2d 428 (1984); *Brotherhood of Railway & Steamship Clerks v. Allen*, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235 (1963).

Section 8(a)(3) does not regulate the labor relations of public employers or forbid states to ban the union shop. The issue of whether an employer's enforcement of a union-shop clause is nevertheless a governmental act (because of the government's role in encouraging collective bargaining), and is therefore within the purview of the First Amendment, is more difficult and remains unresolved. *Wegscheid v. Local Union 2911*, 117 F.3d 986, 988 (7th Cir.1997). But in 1988 the Supreme Court, without reaching the constitutional issue, held that section 8(a)(3) of its own force precludes the employer from requiring workers in the bargaining unit who don't want to be union members to pay any portion of the union dues that is used for activities other than negotiating and administering collective bargaining agreements. All that the employer may require these workers to pay is an "agency fee" representing the portion of the dues that the union expends in its collective bargaining activities. *Communications Workers v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988).

Beck left unresolved the definition of the agency function, the design of procedures necessary to allocate union dues between that function and the other activities of a union, and the methods for assuring that workers learn of and are able to exercise their *Beck* rights. Upon the complaint of a number of nonunion members of bargaining units represented by the 800,000-strong machinists' union, the Labor Board in the 125-page opinion that we review today attempted to answer some of the questions left open by *Beck*. *California Saw & Knife Works*, 320 N.L.R.B. 224, 1995 WL 791959 (1995). The nonunion machinists—we'll call them the "dissenters"—ask us to set aside several provisions of the Board's order and the union asks us to set aside one.

The challengers to the Board's order face an uphill fight, for two reasons. The first is that under the doctrine of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), the Board has broad latitude in interpreting nondirective statutory language. *Holly Farms Corp. v. NLRB*, 517 U.S. 392, —, 116 S.Ct. 1396, 1401, 134 L.Ed.2d 593 (1996); *NLRB v. United Food & Commercial Workers Union*, 484 U.S. 112, 123, 108 S.Ct. 413, 420-21, 98 L.Ed.2d 429 (1987); *Electromation, Inc. v. NLRB*, 35 F.3d 1148, 1156 (7th Cir.1994); *Finerty v. NLRB*, 113 F.3d 1288, 1291 (D.C.Cir.1997). Less directive than section 8(a)(3), so far as agency fees is concerned at any rate, it is scarcely possible to get. The section says nothing about agency fees and so provides no guidance to the formulation of rules governing them. All we have to go on is the Court's holding in *Beck* that the union-shop proviso is intended to prevent workers in a bargaining unit from taking a free ride on the union's efforts in their behalf (the union being required to represent all the members of the unit equally, whether or not they are union members). The free ride is prevented by making the nonmembers pay their aliquot share of the union's cost of representing the workers in the unit--but no more. All the details necessary to make the rule of *Beck* operational were left to the Board, subject to the very light review authorized by *Chevron*. It is hard to think of a task more suitable for an administrative agency that specializes in labor relations, and less suitable for a court of general jurisdiction, than

crafting the rules for translating the generalities of the *Beck* decision (more precisely, of the statute as authoritatively construed in *Beck*) into a workable system for determining and collecting agency fees.

The posture of this case, moreover, makes judicial review necessarily abstract, and as a result limited in depth. In the wake of *Beck*, the machinists' union adopted the procedures that were before the Board in this case. The Board evaluated these procedures not in terms of their actual operation, evidence of which was not placed before the Board, but in terms of their conformity to the general **[1016]**norm of reasonableness that is implicit in the concept of "fair" representation. *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 78, 111 S.Ct. 1127, 1135-36, 113 L.Ed.2d 51 (1991); *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681, 686, 97 L.Ed. 1048 (1953); *Trnka v. Local Union No. 688*, 30 F.3d 60 (7th Cir.1994); *Young v. UAW-LETC*, 95 F.3d 992, 996-98 (10th Cir.1996). The briefs do not even tell us the average annual dues of a member of the machinists' union or the percentage of those dues that is represented by the agency fee, though we were told at argument that the first number is about $300 a year and the second about 85 percent. There is no evidence about actual mistakes in the calculation of the agency fee or actual confusion of workers about their rights under *Beck*. The challengers thus face the difficult task of persuading us without the aid of facts that the Board was unreasonable in determining that some of the union's procedures are reasonable and others (one challenged here) unreasonable, regardless of their actual administration and effect. Nothing in this opinion is intended to prejudge any challenge to the Board-approved procedures that is based on how they operate in practice rather than in the realm of hope and speculation.

The dissenters' first challenge is to the Board's allowing the union to pool all its expenditures (including litigation expenditures, treated separately by the parties but analytically identical, as far as we can see) relating to collective bargaining, and in effect divide the pool by the number of workers that the union represents, to compute the basic agency fee. The dissenters argue that this component of the fee should be limited to the

expenses incurred by the union in representing their units, not other units of workers, let alone workers in another country (Canada), where the machinists' union represents some workers in collective bargaining. The argument overlooks the economic interdependence of bargaining units. Imagine two competing employers of machinists. One has a collective bargaining agreement with the machinists' union that is about to expire; the other does not yet have a collective bargaining agreement with the union although the union is the exclusive bargaining representative of the employer's machinists. The union's ability to extract higher wages from the first employer will be constrained by the competition of the second employer, who may be paying lower wages and thus incurring lower operating costs. It is therefore in the interest of the machinists in the first firm, including those who do not belong to the union, that the union succeed in negotiating an advantageous collective bargaining agreement for the competing firm's machinists. The costs that the union incurs in that effort generate benefits to the nonmember machinists and are therefore a permissible component of the agency fee, even though the union's efforts are directed at a different employer.

We made our example an easy one for the Board by stipulating that the different employers were competing. Often they will not be. They may still be competing for workers, even though their products are not competitive; but then again they may not be. And even in the easy cases, quantification of the benefits to the workers in one bargaining unit from a worker-favorable collective bargaining agreement in another would be impossible as a practical matter. Given the difficulties, aggregation is the only feasible alternative to ignoring interdependence altogether. Faced with such a choice, a classic case of having to choose the lesser of two evils on insufficient information, the Board's decision cannot be deemed unreasonable. *Lehnert v. Ferris Faculty Ass'n, supra*, 500 U.S. at 522-24, 111 S.Ct. at 1960-62; *Finerty v. NLRB, supra*, 113 F.3d at 1291-92. If, moreover, the actual interdependence of units of machinists is so slight as to make the pooling of the expenses of all the different ones unreasonable, this is something to be shown in a challenge to the *application* of the principle of pooling, and no issue of

application was before the Board or is before us. Only the principle itself is at issue, and pooling is not unreasonable at the level of principle.

The dissenters ' next complaint is about the method by which the international union audits the calculation of the agency fee by the locals and the districts (the districts being intermediate bodies between the locals **[1017]**and the international). Rather than hiring a certified public accountant to do the audits, the international assigns auditors who are employed by it or one of the subordinate bodies, but who are not CPAs and may have no formal training in accounting, to audit the agency-fee calculations of a local or district with which the particular auditor has no present or prior affiliation. As all the auditors are the employees of an affiliate of the audited entity, they do not have the formal independence, let alone the training or certification, of accountants who are hired to audit the books of substantial corporations but are not actually the employees of those corporations.

This is another area where the difference between abstract and concrete judicial review bites. The machinists ' auditors may be so biased or so unskilled that they make many mistakes, most no doubt favoring the union. But of this there is as yet no evidence, so we are left to speculate on the likelihood and direction of error under the informal system that the Board has approved. CPAs are costly, so much so that Congress in passing the Landrum- Griffin Act rejected a proposal to require that the reports of union financial activities that the Act requires be made to union members and regulatory bodies be audited by independent CPAs. See H.R. 4473, §§ 102(b)(10), 211(b), reprinted in 1 *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* 193, 237 (1959); Hearings on H.R. 4473 and Related Bills, Joint Subcomm. of the Comm. on Education & Labor, 86th Cong., 1st Sess., vol. 2, pp. 982-92 (May 5, 1959). We do not put much weight on this history, given the general difficulty of inferring legislative intent from rejected bills and materials in hearings and the fact that the rejected proposal would have required CPA audits of reports by unions to their members, not to dissenters, whose rights were not yet well

recognized in the law. Still, we do not think it can be thought *unreasonable*, as distinct from questionable or even incorrect, for the Board to experiment with allowing the machinists' union to use the cheaper informal method of auditing the locals' and the districts' calculations of the agency fee.

The D.C. Circuit reached the opposite conclusion in *Ferriso v. NLRB*, 125 F.3d 865 (D.C.Cir.1997), primarily in reliance on the *Hudson* decision, in which the Supreme Court had suggested in a footnote that the union must verify the agency-fee information that it gives the workers by an *independent* audit. *Chicago Teachers Union v. Hudson*, supra, 475 U.S. at 307 n. 18, 106 S.Ct. at 1076 n. 18. *Hudson* was a constitutional case; it involved the First Amendment rights of public employees, not the statutory rights of workers covered by the National Labor Relations Act. It is not obvious why this should make a difference, however; in either case the worker is entitled to reliable information about the costs of representation, which are the only costs that he is legally obligated to pay. More important is the fact that *Hudson* does not specify what an "independent" audit means. It does not say that the auditor must be a CPA or have no affiliation with the audited union. Decisions before *Ferriso* had assumed that either or both features must be present. E.g., *Hohe v. Casey*, 956 F.2d 399, 415-16 (3d Cir.1992); *Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6th Cir.1987); *Tierney v. City of Toledo*, 917 F.2d 927, 933-36 (6th Cir.1990). But none of the cases consider alternatives. And they are in tension with the cases (often the same cases!) that hold that dissenters are not entitled to the highest level of audit services that the market offers. E.g., *Ferriso v. NLRB, supra*, 125 F.3d at 871; *Gwirtz v. Ohio Education Ass'n*, 887 F.2d 678, 680-82 (6th Cir.1989). One way in which an audit service might not be of platinum quality is in not being performed by a formally independent auditor or CPA.

"Independence" is a slippery term once it is given a functional rather than merely a formal signification. The auditors in the present case have an indirect affiliation with the audited local but are not employed by the local, and it could be argued that an independent auditor hired by the local would

actually feel a greater sense of obligation to the local as the entity paying its bills. Realistically, an accountant is not completely "independent" of its client, because while the client wants to have an accurate picture of its financial health, it also wants the accountant **[1018]**to exercise all possible discretionary judgment in favor of presenting a picture of the client's finances that will further the client's goals, whether they are to maximize share value or minimize taxes or borrowing costs or other obligations. It is within the Board's discretion to decide whether, all things considered, the system adopted by the machinists' union is an acceptable alternative to a system in which the local would hire an independent accounting firm to audit its books. (Because in disagreeing with the *Ferriso* decision we are creating an intercircuit conflict over the issue of the "independent" auditor, this opinion was circulated to the full court for a vote on whether to grant rehearing en banc in advance of decision. 7th Cir. R. 40(e). There were no votes to grant rehearing.)

The dissenters' last challenge is to the Board's ruling that while new hires must receive a letter informing them of their *Beck* rights, it is enough so far as existing employees are concerned to include a notice of the rights in the December issue of *The Machinist*. This is a monthly newsletter published by the union and mailed to all workers, union and nonunion alike, employed in units represented by the machinists' union or one of its locals. The newsletter is "free" to union members (that is, their dues pay for it), but lists a subscription price of $4. Whether the union tries to collect the price from nonmembers we do not know, although the fact that it is mailed to all workers in all the bargaining units represented by the union suggests not—but maybe it's included in the agency fee. The dissenters have made no issue of the price, so neither shall we.

In the December 1991 issue, which we take to be representative, the right-hand column on the sixth page of the eight-page newsletter is occupied by a notice that explains in considerable detail that a worker who doesn't want to belong to the union can pay an agency fee in lieu of union dues upon request made by the end of the next month (January 1992). The first page of the newsletter is largely occupied by an article about Democratic

Presidential hopefuls vying for union support and there are a number of other political articles in the issue, all with a strong Democratic bias. The dissenters argue that "burying" the notice inside this Democratic rag is hardly calculated to inform workers who disagree with the union's politics and ideology of their right to opt out of the union and union dues.

This may be right, but once again we cannot say that the Board acted unreasonably in finding to the contrary, especially in the absence of evidence that the notice in the December issue of *The Machinist* is ineffectual. The Board could reasonably—we do not say correctly; that is not the issue for us—find that since the newsletter contains articles of interest to all machinists, whether or not they have any interest in politics or for that matter in the union, it is quite likely to be read by them. The notice of *Beck* rights is not buried; it occupies almost half of one page in a newsletter that is only eight pages long, making it hard to miss. And the machinists undoubtedly have other sources of information about their *Beck* rights besides the union newsletter. The adequacy of the unions' compliance with *Beck* has been a hot political issue for years, and the National Right to Work Foundation has been active in encouraging workers to assert their *Beck* rights.

Notice by publication is generally considered improper when individual notice (normally by mail) is feasible. E.g., *Elmco Properties, Inc. v. Second National Federal Savings Ass'n*, 94 F.3d 914, 920-21 (4th Cir.1996). In this case, however, the publication containing the notice was *personally* sent to all the people potentially affected by it. The difference need not be dispositive. We do not wish to suggest that the act of subscribing to the daily newspaper places the subscriber on notice of every announcement in it. But we are dealing with a special-interest newsletter, with an announcement that occupies a nontrivial fraction of the total space in the newsletter, and with dissemination in a context in which recipients have other sources of information concerning a controversial issue that affects their welfare directly. Even so, we do not hold that this form of notice is adequate in fact. That is not the question for us. The question for us is whether the Board can be said to have **[1019]**been acting

unreasonably in finding that this form of notice was adequate in the circumstances, and our answer is "no." The Board knows more about the flow of information in labor markets than judges do. And were we to reject the Board's finding, we would entangle ourselves in excessively particularistic inquiries into the details of the notification process. Would we have to edit the notice to make it clearer? Require that it be in larger type? Specify **bold face** or CAPS? Insist that it be put on the front page? Insist that it be put in a letter mailed to every machinist once a year—or twice a month? Without a strong conviction of the inadequacy of the existing notice, a conviction difficult to form without evidence that any machinist has failed to learn of his rights, we are unwilling to embark on such an uncharted sea in quest of a phantom of perfect information.

We take up last the union's challenge to the rejection by the Board of the "window" provision of the union's procedure for complying with *Beck*. Under that provision a machinist who is a member of the union and has been paying his full dues, decides to quit, but fails to opt out of paying full dues during the January "open season" must wait until the beginning of the next year to opt out. (Newly hired employees, or employees newly covered by union-shop clauses, do not have to wait to opt out.) The employee's resignation from the union is effective immediately, but not his switch from paying union dues to the lower agency fee. The Board invalidated this provision, holding that the worker is entitled to switch to paying the lower amount as soon as he resigns. In a private case against the machinists' union (as distinct from the present case, in which the Board is the respondent), we held, in favor of the union, that the window procedure is reasonable and that its invalidation would place an undue administrative burden on the union. *Nielsen v. International Ass'n of Machinists*, 94 F.3d 1107, 1116-17 (7th Cir.1996).

The Board was not a party to *Nielsen* and did not participate in the case in any fashion, and our opinion did not discuss the possible bearing of the *Chevron* doctrine for the simple reason that neither party argued it to us. *California Saw*, the order under review in this case in which the Board invalidated the window provision, was decided after the oral argument in

Nielsen. We criticized the Board's position but did not purport to decide in advance the appeal that is now before us. Now that all affected parties, notably the Board itself, have had a full opportunity to present their positions in this appeal from the order in *California Saw* explicitly within the framework of the *Chevron* doctrine, we are persuaded that the Board must be upheld. Nielsen did not purport to rule in advance on *California Saw*, invalidating the Board's order before it was challenged; it held only, in the context of a private litigation, that the union had not in 1993 violated its duty of fair representation by failing to implement the Board's later adopted rule in *California Saw*. Now that the Board has established and defended its position, normal *Chevron* analysis is the order of the day.

It is no doubt true that changing the method of billing the worker midyear is a bother for the union. But how big a bother depends on such things as the number of changes and the cost and flexibility of the union's system of accounting, billing, and mailing. In the absence of evidence (to repeat for the last time the refrain of this opinion), we cannot say that the Board, balancing the needs of the union against the interests of workers wishing to exercise their rights under *Beck*, acted unreasonably. Nor is there any reason to suppose this Board insensitive to the legitimate interests of unions in avoiding the costs of cumbersome procedures; on the contrary, that sensitivity is apparent throughout the Board's order, notably in its permitting pooling. All this is not to say that *Nielsen* was incorrect. Its rule may be the better one. But deferential review of agency action implies that a court may have to uphold a rule that it would not have adopted as an original matter. In *Nielsen*, a private case, we were asked to use our judgment and apply the best rule to circumstances that had occurred several years before the Board acted. In the present case we are asked to strike down the Board's rule, and we can do that only if convinced not that it is incorrect but that it is unreasonable. **[1020]**And for the reasons that we have set forth we cannot say that.

The petitions for review are denied and the cross-application to enforce the Board's order is granted in its entirety.

ENFORCEMENT GRANTED.

EVANS, Circuit Judge, concurring.

I join Chief Judge Posner's splendid opinion in all respects and write separately merely to emphasize my view that the Board's rejection of the union's January opt-out window is no more than a hair away from being unreasonable. Only our deferential review, required by *Chevron*, sanctions the rock the Board has tossed through the window.

In *Nielsen*, we explained why it is reasonable for a union to employ a window period for former members switching over to an agency fee. Although *Nielsen*, as Chief Judge Posner notes, arose in a slightly different setting, we nevertheless observed there that "[l]ife is full of deadlines, and we see nothing particularly onerous about this one." 94 F.3d at 1116. We went on to observe, by way of an example, that when people miss the deadline for filing an appeal with us their rights are lost forever, not just for a few months.

As with litigants, Article III judges live with action windows. The last monthly "employee earnings statement" for 1997 received from the Administrative Office of the United States Courts warned every federal judge in America that:

> THE ANNUAL FEDERAL EMPLOYEES HEALTH BENEFITS OPEN SEASON BEGAN ON NOVEMBER 10, 1997 AND WILL END ON DECEMBER 8, 1997.
>
> THE TSP [Thrift Savings Plan] OPEN SEASON BEGAN ON NOVEMBER 15, 1997 AND WILL END ON JANUARY 31, 1998.

Given the overwhelming acceptance of deadlines and window periods analogous to the one in this case, it is baffling to me why the Board looked with disfavor on the union's position. I think it's a shame that *Chevron* prevents us from rejecting the Board's view.

APPENDIX B

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

December 20, 1995

[National Labor Relations Board]

[320 NLRB 224]

California Saw and Knife Works *and* Peter Podchernikoff

International Association of Machinists and Aerospace Workers, AFL-CIO; and its District Lodges Nos. 50, 66, 115, 120, 508, 720, AND 751; and its Local Lodges Nos. 78, 354, 821, 946, 1125, 1327, 1871, 1916, 2024, 2227 and 2230(Various Employers) *and* Various Individuals. Cases 34-CA-5160, 34-CB-1313, 34-CB-1314, 34-CB-1315, 34-CB-1316, 34-CB-1323, 34-CB-1324, 34-CB-1360, 34-CB-1361, 34-CB-1362, 34-CB-1363, 34-CB-1408, 34-CB-1409, 34-CB-1421, 34-CB-1422, 34-CB-1440(4-30), 34-CB-1440(32-48), 34-CB-1440(50-61), 34-CB-1440(63-64), 34-CB-1440(67-68), 34-CB-1440(86), 34-CB-1450, 34-CB-1451, 34-CB-1452, 34-CB-1453, 34-CB-1454, 34-CB-1455, and 34-CB-1510

December 20, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING, COHEN AND TRUESDALE

On May 29, 1992, Administrative Law Judge Clifford H. Anderson issued the attached decision. The General Counsel, the Respondent Unions, and various Charging Parties filed exceptions and supporting briefs. The General Counsel, the Respondent Unions, the Respondent Employer, and various Charging Parties filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclu-

---

[1]The Respondent International Association of Machinists and Aerospace Workers, AFL–CIO, has excepted to the judge's findings that: (1) the General Counsel did not abuse his discretion by refusing to defer to the arbitration procedure set forth in its dues-objection policy; (2) the complaint

sions as modified and to adopt the recommended Order as modified and set forth in full below.

I. INTRODUCTION

In *Communications Workers v. Beck*, 487 U.S. 735 (1988), the Supreme Court held that Section 8(a)(3) of the National Labor Relations Act (the Act or NLRA) does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment.[3]

---

allegations are not barred by Sec. 10(b) because they are sufficiently related to the underlying unfair labor practice charges; and (3) the complaint did not improperly create a class of unnamed employees. We note no argument has been made in support of these exceptions and, accordingly, they are deemed to have been waived. Sec. 102.46(b)(2) of the Board's Rules and Regulations. In any event, we agree with the judge, for the reasons set forth by him, that these procedural arguments are meritless.

[2]Some parties have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir.1951). We have carefully examined the record and find no basis for reversing the findings.

[3]Sec. 8(a)(3) provides that:

> It shall be an unfair labor practice for an employer—
>
> by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, that nothing in this Act. . . shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a) [of the Act], in the appropriate collective-bargaining unit covered by such agreement when made . . . . *Provided further*, that no employer

The Court in *Beck* construed Section 8(a)(3) as providing that employees enjoying the benefits of union representation should bear their fair share of the cost incurred by the collective-bargaining agent in representing them.[4] The Court held, however, that the expenditure of dues and fees on activities outside the union's role as collective-bargaining representative violated the union's duty of fair representation to nonmember employees who objected to such expenditures.[5]

The *Beck* decision has evoked immense legal and political controversy.[6] This case represents the Board's first consideration of the ramifications of the *Beck* decision under the NLRA.[7] We

---

> shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership [.]

[4]487 U.S. at 752-754.

[5]Id.

[6]See, e.g. Comment, *Waiver of Beck Rights and Resignation Rights: Infusing the Union-Member Relationship With Individualized Commitment*, 43 Cath.U.L.Rev. 159, 168 (Fall 1993); Elena Matsis, *Procedural Rights of Fair Share Objectors After Hudson and Beck*, 6 Labor Lawyer 251 (1990); Executive Order No. 12,800, 57 Fed.Reg. 12,985 (1992) (Executive Order signed by President Bush requiring that federal contractors notify employees of their rights under *Beck*); Revocation of Certain Executive Orders Concerning Federal Contracting, 29 Weekly Comp. Pres. Doc. 119 (Feb. 1, 1993) (President Clinton rescinding the Executive Order signed by President Bush).

[7]Although the General Counsel has alleged violations as to nonmembers under *Beck*, he has not alleged violated under *NLRB v. General Motors*, 373 U.S. 734 (1963). Accordingly, this decision directly addresses only the rights of nonmember employees under *Beck*. It does not directly address the rights

review today the voluntary *Beck* program set up by the International Asso–**[225]**ciation of Machinists and Aerospace Workers (IAM, Respondent Union, or the Union). Cases originating in unfair labor practice charges against the application of the IAM's rules and procedures under that program to employees of a number of different employers were consolidated for trial. These consolidated cases present a range of questions respecting rights and duties under union-security clauses authorized by Section 8(a)(3) that have been triggered by the holding in *Beck* but were unanswered by the Supreme Court. These issues include: (1) whether notice is required to nonunion members of the right to object to payment of full fees, and to fee payment objectors regarding the use of such fees; (2) whether certain restrictions may be placed on the time and manner of registering a *Beck* objection; (3) whether objectors may be charged only for those activities undertaken directly on behalf of their bargaining unit; (4) what types of union activities that employees may be compelled to pay for under the union-security clauses that are authorized by Section 8(a)(3) of the Act; and (5) what procedures are permissible for determining amounts owed by objectors when issues of chargeable expenses are in dispute.

Prior to addressing each of those specific issues, we make the threshold determination of the standard by which a union's obligations under *Beck* are to be assessed. In section II below we hold that union obligations under *Beck* are properly assessed under the well-established duty of fair representation owed to all members of a designated bargaining unit. In section III we determine whether various elements of the IAM's *Beck* policy alleged to be unlawful violate the Union"s duty of fair representation. In section IV we address whether the IAM's *Beck* policy as applied by the various Respondent District and Local Lodges violated the duty of fair representation. In making these determinations, we are mindful of the Supreme Court's characterization of the two sets of rights and interests our decision here must serve:

---

of nonmember employees, under *General Motors*, to be and remain nonmembers. However, that latter matter discussed infra at fn. 57.

> [T]he objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the union's ability to require every employee to contribute to the cost of collective-bargaining activities.[8]

II. ANALYTIC FRAMEWORK

A. *The Beck Decision*

At issue in *Beck* was the union's practice, enforceable by discharge pursuant to the union-security clause of the collective-bargaining agreement, of requiring nonmember employees to pay a fee to the union in amounts equal to the dues paid by union members. Several employees challenged the practice, claiming that the use of their agency fees on activities other than collective bargaining, grievance adjustment, or contract administration violated the objecting employees' first amendment rights, the union's duty of fair representation, and various common law fiduciary obligations. The Court ruled that its previous decision in *Machinists v. Street*[9] was controlling. The Court held in *Street* that section 2, Eleventh of the Railway Labor Act (RLA)[10] did not permit a union to expend agency fees of objecting nonmember employees for political causes.[11]

The *Beck* Court compared the language and legislative history of Section 8(a)(3) with that of RLA section 2,

---

[8] *Abood v. Detroit Board of Education*, 431 U.S. 209, 237 (1977) (footnote omitted).

[9] 367 U.S. 740 (1961).

[10] Sec. 2, Eleventh provides, in pertinent part, that a labor organization may make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is later, all employees shall become members of the labor organization representing their craft or class. . . . .

[11] Id. at 764.

Eleventh, and concluded, consistent with its prior decision in *Ellis v. Railway Clerks*, [12] that the provisions were statutory equivalents. The Court explained that each provision was promulgated to address the problem of "free riders"—those who enjoyed the benefits of union representation without paying for them—while also guarding against the abuses of the "closed shop." [13] The Court noted that it had held previously, in *Street* and *Ellis*, that "'Congress' essential justification for authorizing the union shop' limits the expenditures that may properly be charged to nonmembers under § 2, Eleventh to those 'necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative'" and that "[g]iven the parallel purpose, structure, and language of § 8(a)(3), we must interpret that provision in the same manner."[14] The Court accordingly concluded that Section 8(a)(3), "like its statutory equivalent § 2, Eleventh of the RLA, authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive [bargaining] representative of the employees in dealing with the employer on labor-management issues.'"[15] The Court expressly declined, however, to rule on the employees' constitutional claims, finding instead that the practice violated the union's duty to fairly represent all employees. [16] Because of the assertions of the General Counsel and the Charging Parties in the present cases, however, we must consider the applicability of the first amendment of the Con–**[226]**stitution, which was an issue left untouched by the *Beck* Court.

B. *Public Sector and Railway Labor Act Cases*

---

[12]466 U.S. 435, 452 fn. 13 (1984).

[13]*Beck*, 487 U.S. at 752.

[14]Id.

[15]Id. at 762-763 (quoting *Ellis*, 466 U.S. at 448).

[16]Id. at 761-762.

In his application of *Beck* to the present cases, the administrative law judge below correctly observed that significant jurisprudence has developed concerning union-security provisions and agency shop arrangements under both public sector labor statutes and under the RLA. The Supreme Court has explained that union-security arrangements in the public employment context are subject to constitutional scrutiny because "the actions of public employers surely constitute 'state action[.]'" *Abood*, 431 U.S. at 226. The Court has accordingly held that nonunion employees in the public employment context "do have a constitutional right to 'prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative.'" *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 301- 302 (1986) (quoting *Abood*, 431 U.S. at 234). The Court has delineated both the activities which a union in the public employment setting constitutionally may charge to objecting nonmember employees and the nature of the procedures required of public employee unions to protect the constitutional rights of objectors. *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991); and *Hudson*, 475 U.S. at 310.

The Supreme Court has likewise specifically held that an agency shop agreement under section 2, Eleventh of the RLA implicates state action and accordingly is subject to constitutional considerations.

> [W]e ruled in *Railway Employees v. Hanson*, 351 U.S. 225 (1956), that because the RLA pre-empts all state laws banning union security agreements, the negotiation and enforcement of such provisions in railroad industry contracts involves 'governmental action' and is therefore subject to constitutional limitations.

Beck, 487 U.S. at 761. The Court in *Hanson* reasoned that such private union-security agreements under the RLA are made pursuant to Federal law which expressly declares that state law is superseded and accordingly "the federal statute is the source

of the power and authority by which any private rights are lost or sacrificed." *Hanson*, 351 U.S. at 232.

The *Beck* Court, in contrast, specifically did "not decide whether the exercise of rights permitted, though not compelled, by § 8(a)(3) [of the NLRA] involves state action." *Beck*, 487 U.S. at 761.[17] Nor has the Board had occasion to consider whether a union-security clause negotiated pursuant to Section 8(a)(3) of the Act implicates state action so as to require constitutional scrutiny, as the Board's practice is to avoid issues of constitutional interpretation.[18] The majority of courts that have addressed the issue have, however, found state action wanting. *Price v. Auto Workers UAW*, 927 F.2d 88, 91-92 (2d Cir.1991), cert. denied 112 S.Ct. 295 (1991); *Kolinske v. Lubbers*, 712 F.2d 471, 474-480 (D.C.Cir.1983); *Reid v. McDonnell Douglas Corp.*, 443 F.2d 408, 410-411 (10th Cir.1971); *Linscott v. Millers Falls Co.*, 440 F.2d 14, 19-20 (1st Cir.1970) (Coffin, J. concurring in judgment), cert. denied 404 U.S. 872 (1971); *Abrams v. Communications Workers*, 702 F.Supp. 920, 921-923 (D.D.C.1988), affd. mem. 884 F.2d 628 (2d Cir.1989), cert. denied 493 U.S. 992 (1989); *Abrams v. Communications Workers*, 818 F.Supp. 393, 399 (D.D.C.1993), affd. in part and revd. in part 59 F.3d 1373 (D.C.Cir.1995); *Fitz v. Communications Workers*, 132 LRRM 2186, 2188 (D.D.C.1989).

The weight of this precedent convinces us that union-security clauses negotiated between a private union and a private employer pursuant to Section 8(a)(3) of the Act do not bear the imprimatur of the state, and that the judge correctly concluded

---

[17]The *Beck* decision did recognize that the Court has on other occasions stated that union rules governed by the NLRA do not involve state action. *Beck*, 487 U.S. at 761. See *Steelworkers v. Sadlowski*, 457 U.S. 102, 121 fn. 16 (1982) (union's decision to adopt an internal rule governing its elections does not involve state action); *Steelworkers v. Weber*, 443 U.S. 193, 200 (1979) (negotiation of collective-bargaining agreement's affirmative action plan does not involve state action).

[18]See, e.g., *Florida Gulf Coast Building Trades Council*, 252 NLRB 702, 705 fn. 3 (1980), enf. denied sub nom. *Edward J. DeBartolo Corp. v. NLRB*, 662 F.2d 264 (4th Cir.1981), revd. 463 U.S. 147 (1983); *Steelworkers*, 244 NLRB 96, 102 fn. 33 (1979), revd. 641 F.2d 545 (8th Cir.1981).

that public sector and RLA precedents premised on constitutional principles are not controlling in the context of the NLRA.[19] As the District of Columbia Court of Appeals declared in *Kolinske v. Lubbers*:

> **[227]**[T]he authorization for agency shop clauses provided by NLRA section 8(a)(3) does not transform agency shop clauses into a right or privilege created by the state or one

---

[19]Member Cohen agrees that the public sector cases involving a constitutional standard are legally different from cases arising under the NLRA, but he would nonetheless consider them for any light they may shed on a given issue. On the other hand, Member Cohen concludes that RLA cases *are* apposite to cases arising under the NLRA. Although the original RLA cases had a constitutional base, and were thus subject to special rules of statutory construction, the Supreme Court has made it clear that the results in all of the RLA cases would be the same under normal rules of statutory construction. In this regard, the Court in *Beck* said:

> In *Street*, we concluded that our interpretation of § 2, Eleventh [of the RLA] was " not only 'fairly possible' but entirely reasonable," 367 U.S. at 750, and we have adhered to that interpretation since. We therefore decline to construe the language of § 8(a)(3) differently from that of § 2, Eleventh on the theory that our construction of the latter provision was merely constitutionally expedient. Congress enacted the two provisions for the same purpose, eliminating "free riders," and that purpose dictates our construction of 8(a)(3) no less than it did that of 2, Eleventh, regardless of whether the negotiation of union-security agreements under the NLRA partakes of governmental action. [487 U.S. at 762.]

In light of the foregoing, and in view of the fact that Sec. 8(a)(3) of the NLRA and sec. 2, Eleventh of the RLA are "nearly identical" (*Beck*, 487 U.S. at 746), Member Cohen concludes that the RLA cases are apposite to cases arising under the NLRA.

This is not to say that a result reached in a prior RLA case would necessarily dictate the result in a subsequent NLRA case. Member Cohen simply concludes that the doctrine of stare decisis would apply. Consistent with that doctrine, a prior case can be distinguished based on relevant differences. Member Cohen's only point is that it is *not* a relevant difference to say that one case arises under the RLA and another under the NLRA. The Supreme Court's language in *Beck*, and the virtual identity of the RLA and NLRA "union-security" provisions, preclude the drawing of such a distinction.

> for whom the state is responsible. . . . To be sure, federal law permits the UAW to negotiate agreements with private parties authorizing the deduction of agency fees. It is also true that labor relations are extensively regulated by the federal government. Yet, federal law goes no further than to authorize the deduction of agency fees and does not enunciate an affirmative policy that compels use of such a clause. Thus, the decision to adopt an agency shop clause ... is not a governmental act. Without the requisite state action, appellee's first amendment claim must fall.[20]

The courts have accordingly drawn a careful distinction between the nonpreemptive nature of Section 8(a)(3) of the Act and the preemptive nature of section 2, Eleventh of the RLA in addressing the state action question. As we observed above, the *Beck* Court made clear "that the finding of state action under section 2, Eleventh of the RLA rests squarely on the fact that the RLA expressly preempts contrary state law."[21] It is the preemptive effect of the RLA, the fact that it allows a private agreement to override contrary state law outlawing the union shop, by which the Government creates a right or privilege for the union and subject to constitutional limitations. *Hanson*, 351 U.S. at 232; *Reid v. McDonnell Douglas*, 443 F.2d at 410; *Kolinske v. Lubbers*, 712 F.2d at 475.

---

[20]712 F.2d at 478, 480.

[21]*Price v. Automobile Workers*, 927 F.2d at 92. sec. 2, Eleventh provides:

> *Notwithstanding any other provisions of this chapter, or any other statute or law of the United States, or Territory thereof, or of any State*, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—
>
> (a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is later, all employees shall become members of the labor organization representing their craft or class. . . . [Emphasis added.]

It is fundamental that Congress has created no similar preemption of state law under Section 8(a)(3) of the NLRA. Indeed, Section 14(b) of the Act explicitly permits states to enact statutes outlawing the agency shop, and some states have passed "right-to-work" statutes which specifically prohibit the kind of union-security clauses involved in this proceeding.[22] Although the Supreme Court has stated that section 2, Eleventh and Section 8(a)(3) are statutory equivalents (*Beck*, 487 U.S. at 745) a critical distinction is that, unlike Section 14(b) of the Act, the RLA preempts any attempt by a State to prohibit a union-shop agreement. *Abood*, 431 U.S. at 218 fn. 12; *Hanson*, 351 U.S. at 232 fn. 5. This distinction has been found to be dispositive vis-a-vis the state action question, as we have observed above, under the weight of relevant jurisprudence, and was left unchanged by the *Beck* Court.[23] We accordingly cannot agree with the arguments of the General Counsel and various Charging Parties below and on exceptions[24] that precedent under public sector

---

[22]Sec. 14(b) of the Act provides:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State Territory in which such execution or application is prohibited by State or Territorial law.

[23]We recognize that the Ninth Circuit has held that the use of agency fees collected pursuant to Sec. 8(a)(3) of the Act is subject to constitutional scrutiny. See *Seay v. McDonnell Douglas Corp.*, 427 F.2d 996, 1003-1004 (9th Cir.1970). But the *Kolinske* court stated, " The Ninth Circuit offered no analysis of the state action question, however, apparently assuming that it was controlled by *Hanson*." *Kolinske*, 712 F.2d at 480 fn. 9. A majority panel of the First Circuit also considered a union-shop clause pursuant to Sec. 8(a)(3) requiring union membership as a condition of employment to involve state action. *Linscott v. Miller Falls*, 440 F.2d at 16-17.

[24]Several Charging Parties in their exceptions urge that constitutional scrutiny is warranted based on the court's description of Sec. 8(a)(3) and sec. 2, Eleventh of the RLA as statutory equivalents, but they fail to analyze or even mention the critical distinction between these provisions with respect to their preemptive effect.

labor law and the RLA grounded in constitutional considerations are binding in the context of the NLRA.[25]

[228]In so concluding, we recognize that the Supreme Court has emphasized the importance of the state action requirement for purposes of applying constitutional safeguards.

> Careful adherence to the "state action" requirement preserves an area of individual freedom by limiting the reach of federal law and avoids the imposition of responsibility on a State for conduct it could not control.

NCAA v. Tarkanian, 488 U.S. 179, 190 (1988) (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936-937 (1982)). In determining questions of state action, the Court relies on the analytical framework it articulated in *Lugar*:

> First, the deprivation [of a federal right] must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. . . . Second, the party

---

[25]To the extent that Member Cohen's assertion (fn. 19, supra) that "RLA cases are apposite to cases arising under the NLRA" reflects a view that the resolution of *every* issue in RLA cases pertaining to the collection of dues and fees under a union-security clause from objecting nonmembers absolutely controls the resolution of analogous issues in NLRA cases, we disagree. We understand the Court's holding in *Beck* equating sec. 2, Eleventh of the RLA with the Sec. 8(a)(3) proviso as meaning simply that Congress intended both as authorizing "compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost." *Beck*, 487 U.S. at 746. There is nothing in that holding that requires that every related procedural or substantive issue (for example, what types of expenses may be fairly said to be "unrelated to collective bargaining, contract administration, or grievance adjustment") be decided identically for collective-bargaining units operating under the RLA and those operating under the NLRA framework. As noted above, however, and as evident in our discussion of notice and other procedural rights below, we find much useful guidance in the Supreme Court's decisions in both the public sector cases and the RLA cases, particularly when the Court appears to be resting its analysis on the duty of fair representation.

> charged with the deprivation must be a person who may fairly be said to be a state actor.[26]

The *Kolinske* court exhaustively reviewed through the prism of *Lugar* whether the decision—as in the instant proceeding—of two private parties to incorporate an agency shop clause as part of a privately negotiated and privately enforced collective-bargaining agreement implicates state action. We fully agree with the Court's conclusion set forth above that the first part of the *Lugar* test is not satisfied because it is settled that the state's mere authorization of private conduct does not justify a finding of state action. "In no sense is the agency shop clause compelled by federal law." *Kolinske*, 712 F.2d at 477-478. Even assuming that such mere authorization may be construed to constitute the exercise of a governmental right or privilege, the second part of the *Lugar* test is not satisfied, because private parties who negotiate agency shop agreements "bear none of the traditional indicia used to attribute private conduct to the state" and, therefore, may not reasonably be said to be state actors.[27]

For all the foregoing reasons, we conclude that union-security clauses negotiated between a union and a private sector employer pursuant to Section 8(a)(3) of the Act do not involve state action implicating constitutional considerations.[28] Thus, we

---

[26]457 U.S. at 437. See *Georgia v. McCollum*, 505 U.S. 42, (1992).

[27]712 F.2d at 478-479. The *Kolinske* court additionally observed that a line of cases exists which attributes private conduct to the state if the private party acts jointly with the state. The *Kolinske* court found, and we agree for the reasons set forth therein, state action to be wanting under the joint conduct test.

[28]In so concluding, we have carefully considered the Court's dictum in *Abood*, 431 U.S. at 232, cited by several Charging Parties in their exceptions, that "differences between public- and private-sector bargaining simply do not translate into differences in First Amendment rights." The state action question was not at issue in *Abood*, however, because the employer was a governmental entity. The *Abood* Court further reiterated that preemption is the basis for state action under the RLA, and specifically noted the contrasting provisions of the NLRA. See *Kolinske*, 712 F.2d at 476-477; and *Abrams*, 702 F.Supp. at 921-922.

must approach the present cases under the analytical rubric of the duty of fair representation.

C. *The Duty of Fair Representation*

The nature of the duty owed by a union to the private sector employees it represents has been the subject of over a half-century of jurisprudence. In *Steele v. Louisville & Nashville Railway Co.*, 323 U.S. 192 (1944), black locomotive firemen challenged the extreme, racially discriminatory seniority agreements entered into by the whites-only union that represented their bargaining unit. The Court held that when Congress empowered unions under the RLA to bargain exclusively for all employees in a particular bargaining unit, and thereby subordinated individual interests to the unit as a whole, it imposed on unions a correlative duty, inseparable from the power of representation, to exercise that authority fairly. "[T]he exercise of a granted power to act in behalf of others involved the assumption toward them of a duty to exercise the power in their interest and behalf[.]" Id. at 202. The Court concluded that the RLA "require[s] the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith." Id. at 204.[29]

A decade later, the Supreme Court extended these fair representation principles developed in the RLA context to the NLRA. The Court explained in *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953), that a union's duty of fair representation under the NLRA arises from the grant under Section 9(a) of the Act of the union's exclusive power to represent all employees in a particular bargaining unit. The Court declared

> [t]hat the authority of bargaining representatives . . . is not absolute is recognized in *Steel* [supra], in connection with comparable provisions of the Railway Labor Act. Their statutory obligation to represent all members of an appropri-

---

[29]See also *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen*, 323 U.S. 210 (1944); and *Wallace Corp. v. NLRB*, 323 U.S. 248 (1944).

ate unit requires them to make an honest effort to serve the interests of all of those members, without hostility to any.

[229]Id. at 337. The Court concluded, however, that the union in *Huffman* had not breached its duty by agreeing to credit new hires for previous military service when determining seniority, recognizing that inevitable differences will arise as to the manner in which the terms of a negotiated agreement will affect individual employees, and acknowledging the public policy favoring seniority preference for military service. The Court explained that "[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." Id. at 338.

Subsequently, the Board embraced the doctrine and held that a breach of a union's duty of fair representation constitutes an unfair labor practice. In *Miranda Fuel Co.*, [30] the Board majority held that Section 7 "gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment." Id. at 185. The Board majority concluded "that Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." Id.[31] The Board has had occasion to apply the duty of fair representation in a wide variety of contexts. "A cursory review of Board volumes following *Miranda Fuel* discloses numerous cases in which the Board has found the duty of fair representation breached where the union's conduct was motivated by an employee's lack of union membership, strifes resulting from intraunion politics, and racial or

---

[30]140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d Cir.1963).

[31]Sec. 8(b)(1)(A) on the Act provides, in pertinent part, that

> [i]t shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [of the Act].

gender considerations." *Postal Service*, 272 NLRB 93, 104 (1984).[32]

In *Vaca v. Sipes*, 386 U.S. 171 (1967), the Court reviewed its development of the duty of fair representation and specifically defined the doctrine. "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the *collective-bargaining* unit is arbitrary, discriminatory, or in bad faith." Id. at 190. The Court stressed that the doctrine granting employees redress in the courts against their bargaining agent serves "as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law." Id. at 182. The Court nevertheless found in *Vaca* that the union had not breached its duty to a wrongfully discharged employee by failing to take his grievance to arbitration, because the union had vigorously pursued the grievance before ultimately concluding that arbitration would be fruitless.

The Court further made clear in *Vaca*, and has continued to emphasize, that the duty of fair representation extends to a wide variety of circumstances. Id. at 177. "Under the doctrine, a union must represent fairly the interests of all bargaining-unit members during the negotiation, administration, and enforcement of collective-bargaining agreements." *Electrical Workers v. Foust*, 442 U.S. 42, 47 (1979); *Beck*, 487 U.S. at 743. Given the wide variety of circumstances in which fair representation principles are apposite, the applicable standards often elude consistent

---

[32]See, e.g., *Occidental Chemical Corp.*, 294 NLRB 623 (1989) (refusal to process grievances on behalf of nonmembers of the union); *Auto Workers UAW Local 417* (*Falcon Industries*), 245 NLRB 527 (1979) (refusal to process grievance because of personal feud between business agent and potential grievant); *Painters Local 1066* (*W.J. Siebenoller Jr., Paint Co.*), 205 NLRB 651 (1973) (racial discrimination); *Wolf Trap Foundation*, 287 NLRB 1040 (1988) (gender discrimination); *Bartenders' & Beverage Dispensers' Local 165* (*Nevada Resort*), 261 NLRB 420 (1982) (operation of exclusive hiring hall); *Operating Engineers Local 324* (*Michigan Chapter, AGCA*), 226 NLRB 587 (1976) (same).

articulation.[33] Indeed, the Supreme Court itself has acknowledged that "there is admittedly some variation in the way in which [its] opinions have described the unions' duty of fair representation[.]" *Air Line Pilots v. O'Neill*, 499 U.S. 65, 76 (1991). The Court accordingly granted certiorari in *O'Neill* to clarify the standard that governs a claim that a union has breached its duty of fair representation with respect to contract negotiation. The Court announced:

> We hold that the rule announced in *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)—that a union breaches its duty of fair representation if its actions are either "arbitrary, discriminatory, or in bad faith"—applies to all union activity. . . .

499 U.S. at 67 (emphasis added).

The *O'Neill* Court further stressed that the tripartite *Vaca* standard applies to contract negotiation, administration, and enforcement, as well as to when a union is acting in its representative capacity in operating a **[230]**hiring hall. Id. at 77.[34] In light

---

[33]Compare *Smith v. Hussman Refrigerator Co.*, 619 F.2d 1229, 1236 (8th Cir.1980), cert. denied sub nom. *Steelworkers Local 13889 v. Smith*, 449 U.S. 839 (1980) ("[t]he scope of the duty of fair representation has never been precisely defined; it 'is a legal term of art, incapable of precise definition,' and calls for an ad hoc review of each factual situation") (citation omitted); *Medlin v. Boeing Vertol Co.*, 620 F.2d 957 (3d Cir.1980) (to state a claim for breach of the duty, it is essential that plaintiffs allege a bad faith motive on the part of the union); and *Miller v. Gateway Transportation Co.*, 616 F.2d 272 (7th Cir.1980) (duty may be breached absent bad faith by the union). See generally 2 C. Morris, *The Developing Labor Law*, 1446-1449 (3d ed. 1992).

[34]The Board and the courts have accordingly applied the duty of fair representation as refined in *O'Neill*, supra, to a variety of circumstances. See, e.g., *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140 (1992) (union did not violate duty of fair representation in devising method for distributing proceeds from arbitral award); *Lewis v. Tuscan Dairy Farms*, 25 F.3d 1138 (2d Cir.1994) (union violated duty of fair representation by negotiating secret agreement with employer, concealing the agreement from unit employees, and failing to follow usual arbitration procedures); *Souter v. International Union (UAWA)*, 993 F.2d 595 (7th Cir.1993) (duty of fair representation applied in context of grievance processing); and *Electronic Workers v. NLRB*,

of the Court's explicit directive that the duty of fair representation applies to all union activity, we find inescapable the conclusion that a union's obligations under *Beck* are to be measured by that standard.[35] Thus, we announce today that we shall apply to cases involving *Beck*-type issues the duty-of-fair-representation standards set forth by the Supreme Court in *Vaca* and *O'Neill*—that is, that a union breaches its duty of fair representation if its actions are arbitrary, discriminatory, or in bad faith.

In applying the standard to the facts of each case, we are cognizant of the Court's admonition not to "unsettle the careful balance of individual and collective interests which th[e Supreme] Court has previously articulated in the unfair representation area." *Electrical Workers v. Foust*, supra, 442 U.S. at 43. As one commentator has observed:

---

41 F.3d 1532, 1537 (D.C.Cir.1994) (union did not violate duty of fair representation by maintaining a union-security agreement requiring bargaining unit employees to become and remain members of the union in good standing). We recognize that the Court of Appeals for the District of Columbia, in *Plumbers Local 32 v. NLRB*, 50 F.3d 29, 34, (1995), held that in spite of the Supreme Court's statement in *O'Neill*—that the *Vaca* tripartite standard applies to all union activity in duty of fair representation cases—it would not change its principle that a union must maintain a "high standard of fair dealing" when operating a hiring hall, "[a]bsent clear instruction from the Supreme Court" that it should do so. We note that this proceeding does not involve issues relating to the operation of a hiring hall, and thus we need not address the issue of whether there is a higher threshold to be met within the "arbitrary, discriminatory or bad faith" standard for hiring hall cases. We note further that, subsequent to the issuance of its opinion in *Plumbers Local 32 v. NLRB*, supra, the Court of Appeals for the District of Columbia has applied the *Vaca* tripartite standard in a duty-of-fair representation case involving many of the same *Beck* issues involved here. See *Abrams v. Communications Workers*, 59 F.3d 1373 (D.C.Cir.1995).

[35]We accordingly find relevant, in agreement with Member Cohen, those RLA cases decided on statutory fair representation principles. See, e.g., *Machinists v. Street*, 367 U.S. 740 (1961); and *Railway Clerks*, 373 U.S. 113 (1963).

> judicial and agency decisions have been increasingly sensitive to the careful balance struck by the Supreme Court in *Hudson* between the constitutionally and statutorily protected interests of non-union employees and the interests of unions in being able to perform their statutory duties without unreasonable administrative burdens. In light of these strong competing interests, the emerging body of law is notable for its movement toward reasonableness and practicality in this hotly litigated area.[36]

We view it as our charge to bring the values of reasonableness and practicality into our own considerations of the facts of each case. We are mindful of the tension between individual, collective, and public policy interests that lies at the core of the duty of fair representation.[37] What is required here is a careful balance between the competing interests involved. "Most fair representation cases require great sensitivity to the tradeoffs between the interests of the bargaining unit as a whole and the rights of individuals." *Breininger v. Sheet Metal Workers*, 493 U.S. 67, 77 (1989).

We now consider the facts at issue in this proceeding in light of the foregoing principles.

III. NATIONAL ISSUES [38]

---

[36]Matsis, *Procedural Rights of Fair Share Objectors After Hudson and Beck*, 6 Labor Lawyer at 293.

[37]See *Steele v. Louisville & Nashville Railway Co.*, 323 U.S. at 203 (duty of fair representation "does not mean that the statutory representative is barred from making contracts which may have unfavorable effects on some of the members of the craft represented."); *Vaca v. Sipes*, 386 U.S. at 182 ("[t]he collective bargaining system as encouraged by Congress and administered by the NLRB of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit").

[38]The General Counsel challenged certain aspects of the IAM's *Beck* policy, which the judge characterized as "National Issues." The General Counsel also challenged the policy as applied by the various District and Local Lodges, which the judge termed "Local Issues." We shall maintain the

A. *Overview of the IAM's Beck Policy*

The facts are fully set forth in the judge's decision and are briefly summarized here. The IAM, also known as the Grand Lodge, administers its *Beck* policy for its 6 smaller District Lodges and approximately 1400 Local Lodges. Its approximately 800,000 members operate under approximately 6500 to 8000 collective-bargaining agreements, of which at least one-half contain union- security clauses.[39] In most cases, the Local Lodges are the entities that are certified as the exclusive representatives of the members. There are approximately 12,000 nonmembers represented in the bargaining units. In 1990, the IAM received some 900 dues objector applications.

The IAM has maintained a *Beck* rights notification policy since 1986, approximately 2 years before the Supreme Court issued its *Beck* opinion. It publishes the notice annually in the December issue of its monthly magazine, the Machinist. The Union's practice is to mail the magazine to the last known address of all union member and nonmember bargaining unit em–**[231]**ployees. The policy provides that objections to paying dues for nonrepresentational activities must be sent to the IAM secretary-treasurer during the month of January, or within the first 30 days an objector becomes subject to the provisions of a union- security clause. The objection must be sent by certified mail in an individual letter.

On receipt of the objection, the employee's dues are reduced automatically according to past allocations of expenses for union activities grouped by categories, and an escrow arrangement is put in place. The employee also is given a package of information summarizing the major categories of Grand Lodge expenses, and an explanation of how the reduction is calculated for the Grand Lodge. The employee is informed of the method of calculating the reductions in dues for District and Local

---

same designations for the sake of continuity.

[39]The General Counsel does not contest the validity of the union-security clauses in this case.

Lodges—according to a survey of a limited number of Districts and Locals—and is informed of the amount of the reduction.

An independent firm of certified public accountants issues a final report annually, which is used as the basis for the reduction in dues sent to the Grand Lodge. (Local Lodges send a portion of the dues and fees they collect to the Districts and pay a per capita tax to the IAM. Both the Districts and IAM provide services to the Locals.) The IAM's in-house auditing staff conducts the survey of Districts and Locals and applies the ensuing reduction to all dues objectors regardless of the bargaining unit. Objectors are given the right, by challenging the surveys, to have their own District and Local Lodges audited. Objectors also may challenge the dues-reduction figures in general and participate in an annual, consolidated arbitration of all such challenges. The IAM bears the cost of the arbitration, but the challenger must bear his own costs of transportation, lost time, and legal fees, if any. Objections must be renewed annually.

B. *Notice of Beck Rights*

The General Counsel alleges that the IAM's *Beck* policy violates Section 8(b)(1)(A) of the Act by failing to provide adequate notification to nonmember employees of their right under *Beck* to object to the expenditure of dues money for activities unrelated to collective bargaining, contract administration, and grievance adjustment.

First, it is alleged that the IAM's publication notice of its *Beck* policy in the annual December issue of the Machinist is unlawful, because the cover of the publication does not specifically alert nonmembers that the IAM's *Beck* policy is contained therein. Second, the General Counsel alleges that the IAM unlawfully fails to issue additional *Beck* notice—apart from publication notice in the Machinist—to two subgroups of nonmember employees: (1) to newly hired nonmember employees at the time they are hired into the bargaining unit; and (2) to newly resigned nonmember employees when they resign their union membership.

The judge dismissed these allegations. He observed that Board precedent does not require a union to notify employees of

purely statutory rights, such as the right to refrain from joining a union on religious grounds under Section 19 of the Act. The judge contrasted this principle with Board precedent holding that a union's failure to notify employees of rights arising from a collective-bargaining agreement may violate the duty of fair representation.[40] The judge deemed *Beck* rights as falling squarely in the former category of statutory rights of which disclosure is not generally required, and accordingly found the General Counsel's notice allegations meritless.

The General Counsel and certain Charging Parties have excepted to the judge's dismissal of these notice allegations. On careful consideration, we cannot agree with all of the judge's conclusions. We find, in general, for the reasons set forth below, that if a union seeks to apply a union-security clause to unit employees, it has an obligation under the duty of fair representation to notify them of their *Beck* rights before they become subject to obligations under the clause. We further find, however, that a union does not have an obligation under the duty of fair representation to issue an additional notice of *Beck* rights to new nonmember employees at the time they resign their union membership.

We further find, in this case, that the Union has an obligation under the duty of fair representation to give *Beck* rights notice to (1) newly hired nonmember employees at the time the Union seeks to obligate these newly hired employees to pay dues and (2) currently employed employees at the time they become nonmembers if these currently employed employees have not been sent a copy of the December issue of the Machinist. We find, however, that the Union has otherwise met its obligations under the duty of fair representation by including its *Beck* policy in the December issue of the Machinist, which, as noted above, the Union mails to all unit employees, and that it did not breach

---

[40]See, e.g., *Law Enforcement & Security Officers Local 40B* (*South Jersey Dective*), 260 NLRB 419 (1982) (union violated Sec. 8(b)(1)(A) by failing on request to make available its collective-bargaining agreement and its health and welfare plan to covered employees); *Teamsters Local 896* (*Anheuser-Busch*), 280 NLRB 565, 576 (1986) (union violated Sec. 8(b)(1)(A) by failing on request to provide grievant with pertinent contractual provisions and misinforming her about contractual provisions).

its duty of fair representation by failing to note on the cover of the December Machinist that its *Beck* policy was contained therein.[41]

[232]The judge correctly observed that the Board has generally not required a union to notify unit employees of purely statutory rights.[42] We do not, however, agree with the proposi-

---

[41]Member Cohen finds that the notice in the Machinist was not reasonably calculated to apprise nonmember employees of their *Beck* rights. In this regard, he notes that the Union highlights other information on the cover of the Machinist, but has never mentioned *Beck* rights on the cover. Thus, assuming arguendo that a union can discharge its obligations by informing employees via a general publication, Member Cohen believes that the publication must contain material on the cover, or at least in a table of contents, that would alert nonmember employees that their statutory rights are set forth inside. Member Cohen also notes that the Machinist came out on a monthly basis, and there was nothing on the cover of the December publication to alert the recipient that it was different from the publication of any other month. Absent such an alert, it is most unlikely that nonmember employees would read through a publication of an organization to which they do not belong. Since the Machinist does not meet these minimal requirements, Member Cohen believes that the publication does not represent a good-faith effort to apprise nonmember employees of their statutory rights. In addition, Member Cohen notes the Respondent's requirement that an objection, in order to remain valid, must be renewed each year. Although some Charging Parties attack this requirement as unlawful, the General Counsel does not do so. Accordingly, Member Cohen does not pass on the legality of this requirement. However, in his view, this requirement makes it even more imperative that Respondent clearly apprise employees each year of the upcoming " window" period for making *Beck* objections or renewing such objections. That imperative is not met here. There is no letter apprising employees that their objections are about to expire, and the Machinist publication is not a reasonable mechanism for giving that message. See fn. 7 in *Paperworkers Local 1033* (*Weyerhaeuser Paper*), 320 NLRB No. 12, issued today.

[42]The IAM correctly argues in its briefs, for example, that there is no requirement that a union or an employer inform employees of their statutory rights under *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), and that an employer or union similarly has no obligation to inform employees of their rights under Sec. 7 or 8 of the Act. But see *Electrical Workers IUE Local 444* (*Paramax Systems*), 311 NLRB 1031 (1993), enf. denied 41 F.3d 1532

tion that *Beck* rights are wholly unrelated to contractual rights. *Beck* rights operate as a limitation on objecting employees' obligations under a contractual union-security clause. Were it not for a contractual union-security clause by which a union could compel an employer to discharge a noncompliant unit employee, the issue of employees' *Beck* rights would not arise. We accordingly do not believe that the dichotomy between statutory and contractual rights drawn by the judge is dispositive of whether a nonmember employee must be notified of his or her *Beck* rights pursuant to a union's duty of fair representation.

The Board has frequently had occasion to address the notice requirement imposed by the duty of fair representation when a union seeks an employee's discharge for failure to comply with the financial obligations imposed by a union-security clause. In *Philadelphia Sheraton Corp.*,[43] the Third Circuit agreed with the Board that a union cannot lawfully demand an employee's discharge for nonpayment of dues pursuant to a union-security clause without disclosing to the employee what steps the employee must take to avoid such discharge. The Board explained:

> [W]hen a union requires a new employee to perfect membership under a lawful union-security agreement, it has a duty to notify the employee, at some point, as to what his "membership" obligations are. To permit a union to lawfully request the discharge of an employee for failure to meet his dues-paying obligations, where the provisions relating to

---

(D.C.Cir.1994)(Board majority held that unions maintaining union-security clauses requiring membership in good standing are obligated under duty of fair representation to inform employees of their right to remain nonmembers). Member Browning did not participate in *Paramax* and expresses no view on the result therein.

[43]136 NLRB 888 (1962), enfd. sub nom. *NLRB v. Hotel & Restaurant Employees Local 568* (*Philadelphia Sheraton*), 320 F.2d 254, 258 (3d Cir.1963).

such obligations are not disclosed to the employee, would be grossly inequitable and contrary to the spirit of the Act.[44]

The Board accordingly requires that before a union may seek the discharge of an employee for the failure to tender dues and fees, it must at a minimum give the employee reasonable notice of the delinquency, including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount; tell the employee when to make the required payments; and explain to the employee that failure to pay will result in discharge.[45] It is thus long-standing Board law that a union seeking an employee's discharge under a union-security clause "has a fiduciary duty to deal fairly with that employee." *Western Publishing Co.*, 263 NLRB 1110, 1111 (1982).

The General Counsel and the Charging Parties do not seek notice of *Beck* rights, however, at the time the union requests the employer to terminate an employee for failure to meet his union-security obligations. The crux of the exceptions of the General Counsel and the Charging Parties is that notice of *Beck* rights must be given to nonmembers at an earlier point in time—when the union seeks to obligate employees to pay dues—so as to afford nonmembers a full opportunity to avail themselves of their rights under *Beck*.[46] The General Counsel and the Charging Parties accordingly request that *Philadelphia Sheraton*, supra, be interpreted to require notice at this earlier time.

The starting point for determining whether *Beck* requires an

---

[44]136 NLRB at 896.

[45]*Electrical Workers IBEW Local 99 v. NLRB*, 61 F.3d 41 (D.C.Cir.1995), enfg. 310 NLRB 613 (1993). *Communications Workers Local 9509 (Pacific Bell)*, 295 NLRB 196 (1989); and *Helmsley-Spear, Inc.*, 275 NLRB 262 (1985).

[46]We note that a union triggers no disclosure requirement of *Beck* rights, even in the context of constitutional scrutiny, until it seeks to obligate nonmembers to pay dues or fees. See *Tierney v. City of Toledo*, 824 F.2d 1497, 1503 fn. 2 (6th Cir.1987).

expansion of the Board's current law regarding union notice obligations is *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292 (1986). *Hudson* is the touchstone for measuring whether adequate notice has been provided to nonmember employees in the *public* sector of the nature of the union expenses **[233]**they are required to pay. The Court held that "*[b]asic considerations of fairness*, as well as concern for the First Amendment rights at stake . . . dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee" (emphasis added). Id. at 306. The Court's holding in *Hudson* requiring notice to nonmember employees regarding the basis for the proportionate share charged to them was thus not rooted solely in first amendment considerations. Rather, the Court's notice holding was additionally premised on basic considerations of fairness, which clearly implicate a union's statutory obligations as well. We are convinced that the Court's explicit articulation of this broader rationale demonstrates that the Court's concern that nonunion employees not be left "in the dark about the source of their agency fee" was not entirely limited to the constitutional context, but is also a relevant concern in the context of a private sector union's duty of fair representation.[47] See *Abrams v. Communications Workers*, 59 F.3d at 1379 fn.7[48].

---

[47]For institutional reasons, the Chairman agrees with the finding of a violation with respect to the notice issue here under the duty of fair representation. However, Chairman Gould is of the view that the notice issue is cognizable under Sec. 8(b)(1)(A) of the Act and the thrust of the Supreme Court's 1967 decision in *NLRB v. Allis Chalmers Mfg. Co.*, 388 U.S. 175, which impliedly recognizes the right of employees to limit or opt out of full membership is only meaningful if employees have knowledge of internal union procedures including rules relating to resignation. *Allis Chalmers*, which establishes this Sec. 7 right to refrain from union activity under Sec. 8(b)(1)(A), governs this issue. Accordingly, given extant Supreme Court authority, it is appropriate to resolve such issues under Sec. 8(b)(1)(A)'s prohibition against restraint and coercion rather than under the duty of fair representation standards set forth in *Vaca v. Sipes*, 386 U.S. 171 (1967), and further explained in *Paramax*, supra, discussed infra.

[48]The Court's rationale in *Hudson* regarding basic considerations of fairness expressly extended only to the notice requirement, and not to the

We recognize, too, that prior to *Beck* the Board has consistently required unions to provide accurate information to bargaining unit employees regarding the extent of their financial obligations to the union.[49] The provision of *Beck* notice to newly hired nonmembers promotes the dissemination of accurate information to these employees regarding their financial obligations to the union. Such notice further vindicates the Court's concern for fairness by ensuring that, at the time the union first seeks to obligate newly hired nonmember employees to pay dues, the affected nonmember employee is also informed of the right under *Beck* to pay only a proportionate share of full dues. This notice requirement furnishes significant protection to the interests of the individual nonmember employee vis-a-vis *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective-bargaining activities.[50]

For these reasons, we find that a union acts arbitrarily and in bad faith—in breach of its duty of fair representation—when it fails to inform newly hired nonmembers of their *Beck* rights at the time the union first seeks to obligate these newly hired nonmember employees to pay dues. For the same reasons, to the

---

other requirements imposed on public sector unions in *Hudson*.

[49]See, e.g., *Steelworkers Local 14940* (*Voyager Emblems*), 215 NLRB 840 (1974) (collection of fees must comport with requirements of collective-bargaining agreement); *Operating Engineers Local 139* (*Camosy Construction*), 172 NLRB 173 (1968) (union may not demand payment of back dues for a period which arose during a period when there was no obligation to maintain union membership); and *Laborers Local 1445* (*Badger Plant*), 266 NLRB 386 (1982) (union may not refuse to accept dues until the employee first pays fines previously imposed by the union).

[50]Although the *Hudson* Court addressed the notice issue in the context of "information about the basis for the proportionate share" charged to nonmembers, we agree with the Court of Appeals for the District of Columbia that the same "basic considerations of fairness" necessarily extend to a union's notice to nonmembers of their right to object to payment of nonrepresentational expenses. See *Abrams v. Communications Workers*, supra, 59 F.3d at 1379 fn. 6.

extent that there are bargaining unit employees who were not informed of their *Beck* rights when they were hired, the union has an obligation to inform them of those rights if it is obligating or seeking to obligate them to pay dues. Because this obligation is based on our conclusion that it is a violation of the duty of fair representation for a union to fail to provide such notice before it seeks to obligate an employee to pay dues, we stress that the union meets that obligation as long as it has taken reasonable steps to insure that all employees whom the union seeks to obligate to pay dues are given notice of their rights.

Thus, we find that when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the employee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures.[51]

Given the fact that *Beck* clearly mandated changes in the way the Board construed Section 8(b)(1)(A) and (2) of the Act with respect to payment of less than full fees, this case is unlike *Electronic Workers IUE* (*Paramax Systems*) *v. NLRB*, 41 F.3d 1532 (D.C.Cir.**[234]**1994) (*Paramax*), in which the court of appeals held that a union could not be found to have acted in bad faith by engaging in certain conduct because the union had reason to believe that the Board had previously expressly found the conduct lawful under the Act. In particular, the court held that the union could not be found in violation of Section 8(b)(1)(A) for maintaining a union-security clause requiring that employees remain "members in good standing," because the Board had squarely held in an earlier case that a clause consist-

---

[51]Of course, the requirement to provide the information outlined above neither precludes a union from providing fuller information respecting employee rights or from attempting to persuade employees to become full members of the union through noncoercive means.

ing of exactly the same language was lawful, and because, in the court's view, *Beck* had not spoken to the particular issue of the wording of a union-security clause. Id. at 1538, 1539. The present case, by contrast, raises issues clearly brought to the fore by *Beck*, and the Union has not detrimentally relied on any affirmative decisions by the Board approving the procedures that the Union has employed in the course of administering the union-security clauses it has negotiated. Therefore, neither *Electronic Workers IUE*, supra, nor precedents applying retroactivity principles[52] preclude our finding notice violations in light of *Beck* in the present case.

1. The IAM's publication notice

The record establishes that the IAM provides notice to all currently employed nonmembers of their *Beck* rights, as well as a description of its *Beck* policy, each year in the December issue of the Machinist newsletter, which is mailed to the last known address of all member and nonmember bargaining unit employees. The General Counsel does not allege that the content of the IAM's *Beck* notice is unlawful or otherwise deficient, and further concedes that the notice published since December 1989 "contains all the information required by [the] General Counsel."[53]

---

[52]See, e.g., *Browne v. WERC*, 485 N.W.2d 376, 389 (Wis. S.Ct.1992) (giving Supreme Court's *Hudson* holdings retroactive application in public sector employment case); *Dean v. Trans World Airlines*, 924 F.2d 805, 809 (9th Cir.1991) (applying *Hudson* principles retroactively in RLA case). See also *Loehmann's Plaza*, 305 NLRB 663, 672 (1991), citing *NLRB v. Bufco Corp.*, 899 F.2d 608, 609 (7th Cir.1990) (no manifest injustice in applying arguably new rule to case in which it is first announced if the law has not been previously settled to the contrary).

[53]The General Counsel accordingly recognizes that the IAM's notice contains the following information: (1) that a stated percentage of funds was spent in the last accounting year for nonrepresentational activities; (2) that nonmembers may under *Beck* object to having their union-security payments spent on such activity; (3) that those who object will be charged only for representational activities; and (4) that if they object, the union will provide detailed information concerning the breakdown between representational and nonrepresentational expenditures. Compare *Abrams v. Communications*

Nor does the General Counsel challenge as unlawful the dissemination of the IAM notice via annual publication. Rather, the General Counsel alleges solely that the IAM's *Beck* notice is unlawful because it appears in a publication that does not on its cover specifically alert recipients that the policy is contained within. The General Counsel asserts that because the IAM has in the past highlighted other information on the cover, its failure to alert nonmembers to the inclusion of the *Beck* notice is "more than inadvertence and neglect, but a conscious effort to withhold such information from nonmembers." The General Counsel also would have us infer that because only 900 nonmember employees filed objections during January 1990, out of an estimated 12,000 nonmember employees, a substantial number of nonmember employees are unaware of their rights.

We cannot agree with the General Counsel that the IAM acted arbitrarily, in bad faith, or in a discriminatory manner, and thereby violated its duty of fair representation, by failing specifically to note its *Beck* policy on the cover of its publication[54]. Our review of the publication notice provided by the IAM does not support the General Counsel's essential premise that the failure to have a cover notation demonstrates that the notice is "buried" in the newsletter for purposes of obfuscation. There can be no dispute that the IAM's *Beck* policy is well marked; it is highlighted in color and is accordingly distinct from other text and further set apart from other text by being placed in a long horizontal format with a highlighted outline, with the word "Notice" is in bold print at the top. Of further significance is that the December 1989 newsletter is only 12 pages in length in a newspaper format, with the notice thus apparent from even a cursory review of the brief newsletter. This is not a case where a union's publication notice of its *Beck* policy is hidden in a lengthy publication such that, without a cover

---

Workers, supra, 59 F.3d at 1378-1381, in which the adequacy of the content of the union's *Beck* notice was litigated and found to be unlawful.

[54]We note that of the December 1988, 1989, and 1990 Machinist publications contained in the record, two have only a seasons greetings message on the cover, while the December 1989 publication does highlight articles contained therein.

notation, a nonmember employee making any reasonable perusal of the publication would likely not be alerted to the *Beck* policy[55]. Nor is there any basis for deeming the IAM's publication notice discriminatory; the same notices are sent to all represented employees regardless **[235]**of membership. We are compelled to conclude that the IAM's method of publication notice here falls permissibly within the wide range of reasonableness afforded a union in satisfying its duty of fair representation, and cannot be construed to have been undertaken arbitrarily, discriminatorily, or in bad faith. We accordingly find that the form and content of the IAM's publication notice is sufficient to satisfy the union's obligation under the duty of fair representation to notify nonmembers of their rights under *Beck*.

2. Newly hired employees

It is undisputed that the IAM failed to notify employees newly hired into a bargaining unit of their *Beck* rights at the time it first sought to obligate these employees to pay dues. Newly hired employees are typically presented at the commencement of their employment with both a union membership application form and a dues-checkoff authorization form.[56] The presentation to a newly hired nonmember employee of both the dues-checkoff authorization form and the membership form may, absent concurrent notification of *Beck* rights, mislead these newly hired

---

[55]We accordingly fully agree with Member Cohen that a publication notice method may violate the duty of fair representation if the circumstances establish that the notice is not reasonably calculated to apprise the nonmember employees of *Beck* rights. On our careful examination of the IAM's Machinist publications set forth in the record, however, we cannot agree with Member Cohen that the IAM here violated the duty of fair representation. See *Nielson v. Machinists*, 895 F.Supp. 1105, 1114, (N.D.Ind.1995) (" Upon review of an actual copy of the December 1993 issue of *The Machinist*, the court finds that the notice is well-marked, as it is listed in the table of contents on the second page, and is printed in legible type and highlighted in green on the seventh page. (The entire magazine is only eight pages in length).")

[56]See, e.g., *Colin Service Systems*, 226 NLRB 70, 71-72 (1976); and *Air La Carte*, 284 NLRB 471, 473 (1987).

nonmember employees to believe that payment of full dues and assumption of full membership is required. The presentation of the membership application and dues-checkoff form to a newly hired nonmember employee constitutes an attempt to obligate an employee to pay full dues. Basic considerations of fairness require that the union at that time inform newly hired employees of their *Beck* rights and that therefore the Union acts arbitrarily and in bad faith by not giving such notice, in violation of its duty of fair representation. We accordingly find, as alleged, that the IAM violated Section 8(b)(1)(A) of the Act by failing to notify newly hired nonmember employees of their rights under *Beck* at the time it first sought to obligate these newly hired employees to pay dues.[57]

3. Newly resigned employees

We find meritless, however, the General Counsel's additional contention that the IAM acted unlawfully by failing to provide separate *Beck* notice, apart from publication notice, to those union members who resign their membership during the course of the year. As we have found above, the record evidence establishes that the IAM took reasonable efforts annually to apprise via publication notice all currently employed members and nonmembers of the IAM's *Beck* policy. Thus, each newly resigned employee who tenders resignation after December would have received at least one publication notice of his or her *Beck* rights. When all unit employees have received that notice,

---

[57]As noted, supra at fn. 7, this decision directly addresses only the rights of nonmember employees under *Beck*. It does not directly address the rights of nonmember employees, under *NLRB v. General Motors*, 373 U.S. 734 (1963), to be and remain nonmembers. However, because of the close connection between the two, we would be remiss if we did not set forth our views concerning *General Motors*. In this regard, we note that *Beck* rights accrue only to nonmembers. Thus, in order to fully inform nonmember employees of their *Beck* rights, a union must tell them of this limitation, and must tell them of their *General Motors* right to be and remain nonmembers.

With respect to a union's obligation to tell members of their *General Motors* right to become nonmembers, see *Paperworkers Local 1033 (Weyerhaeuser Paper)*, 320 NLRB No. 12, issued today.

we cannot conclude that the IAM acted arbitrarily, in bad faith, or in a discriminatory manner by failing to provide an additional notice to those employees at the time of their resignation. We also note that newly hired employees must receive notice of *Beck* rights at the time the Union first seeks to obligate them to pay dues, as we have held above, and we likewise find that a union does not act arbitrarily, in bad faith, or in a discriminatory manner, by failing to renotify such employees at the time of their resignation.[58] For these reasons, we cannot conclude that the IAM breached its duty of fair representation by failing to provide notice again of the *Beck* right to newly resigned employees at the time of their resignation.[59]

C. *Time and Manner of Objection*

The General Counsel further alleges that the IAM *Beck* policy places certain unlawful restrictions on nonmember employees' ability to register a *Beck* objection.

The General Counsel first makes a limited attack on the requirement of the IAM policy that all objections be filed during the month of January—the so-called "window period." The General Counsel does not allege that a union acts unlawfully by requiring that objections be filed by nonmembers within a limited window period. Indeed, as the judge recognized, several courts have found permissible the use of a window period for

---

[58]As noted above, however, if there are any employees who wish to resign and become nonmembers, who were newly hired after the December issue of the Machinist was mailed, and who have not yet received notice of their *Beck* rights, the Union is obligated to notify them of those rights.

As discussed supra at fn. 41, Member Cohen does not believe that the Machinist provided adequate notice of *Beck* rights. Accordingly, he would find a violation in regard to newly resigned employees.

[59]In light of our holding that notice of *Beck* rights is required in the circumstances set forth above, we adopt the judge's finding that the IAM violated Sec. 8(b)(1)(A) of the Act by failing to make clear in its notice that its *Beck* policy applied to initiation fees as well as dues. We find, contrary to the exceptions of the IAM, that the judge's findings with respect to initiation fees were reasonably comprehended in the complaint allegations.

filing objections in the public sector and RLA context.[60] "The union, as well as the employees, have **[236]**an interest in the prompt resolution of obligations and disputes. The 30-day window period facilitates prompt resolution and leaves no doubt as to the timing or the requirement for making an objection." [61] The D.C. Circuit has likewise approved the use of a window period in the context of a union's *Beck* policy under the NLRA. See *Abrams v. Communications Workers*, supra, 59 F.3d at 1381.[62]

The General Counsel rather makes the limited allegation that the window period is violative of Section 8(b)(1)(A) of the Act *solely* as applied to employees who resign their membership following the expiration of the January window period. The General Counsel reasons that a union member who resigns after the January window period has passed is compelled to wait until the following January to register a *Beck* objection.[63] The General Counsel accordingly asserts that the window period impermissibly burdens the resignation rights of those individuals who resign their union membership following the window period.

On careful consideration, we agree with the judge that the January window period, as applied solely to individuals who resign their union membership after the expiration of the window

---

[60]See *Kidwell v. Transportation Communications Union*, 731 F.Supp. 192, 205 (D.Md.1990), affd. in part and revd. on other grounds, 946 F.2d 283 (4th Cir.1991), cert. denied 112 S.Ct. 1760 (1992); *Andrews v. Education Assn. of Cheshire*, 653 F.Supp. 1373, 1378 (D.Conn.1987) (approving 30-day objection period), affd. 829 F.2d 335 (2d Cir.1987).

[61]731 F.Supp. at 205.

[62]The IAM's requirement that *Beck* objections be registered annually is not alleged to be unlawful by the General Counsel. We note that courts have approved the annual objection requirement in the NLRA, RLA, and public sector context. See *Abrams v. Communications Workers*, supra, 59 F.3d at 1381; *Kidwell v. Transportation Communications Union*, supra, 731 F.Supp. at 205; *Tierney v. City of Toledo*, 824 F.2d at 1506.

[63]In contrast, newly hired employees and employees transferred into the unit are granted a 30-day window period from the date of their arrival to the unit within which to file their objections.

period, effectively operates as an arbitrary restriction on the right to be free to resign from union membership. *Pattern Makers v. NLRB*, 473 U.S. 95, 107 (1985); *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984)[64]. A unit employee may exercise *Beck* rights only when he or she is not a member of the

---

[64]Chairman Gould is of the view that the statute as written does not provide for a "fundamental right to be free to resign from union membership." It is true, as the Court stated in *Pattern Makers*, supra, relied upon by a majority of the Board here, that the Court affirmed the Board's view expressed in *Neufeld Porsche-Audi* (270 NLRB at 1333), that the right to resign is absolute. *Pattern Makers*, 473 U.S. at 105. But the deciding vote cast by Justice White in that 5-4 decision was predicated on deference to the Board's exercise of its expertise. Id. at 116-117. Indeed, a substantial part of Justice Powell's majority opinion in *Pattern Makers* is similarly rooted in this policy. Id. at 114-115. The Board can change its position when it exercises its expertise. See, for example, *NLRB v. J. Weingarten*, 420 U.S. 251 (1975). Chairman Gould believes that the Board is free to change its position on the right to resign in the wake of *Pattern Makers* and that it should do so.

Chairman Gould's view is that the statute, rather than containing a fundamental right to resign which is not explicitly affirmed in the Act itself, provides for a policy of carefully taking into account the competing rights to engage in concerted activity and to refrain from so engaging. This is the policy protected by the Act. Accordingly, as the Chairman has previously written, a union constitution which allows employees to exercise a right to resign during a period of time immediately prior to the renegotiation of a collective- bargaining agreement when the employees will have knowledge of the union's expressed policy in the negotiations, may restrict the right to resign thereafter. Chief Justice Burger in *NLRB v. Textile Workers Local 1029, Granite State Joint Board*, 409 U.S. 213, 218 (1972), explicitly acknowledged the union's solidarity interest in protecting the right to engage in concerted activities by limiting the right of strike-breakers or dissenters to resign once industrial combat or warfare is commenced. See William B. Gould, *Solidarity Forever—or Hardly Ever: Union Discipline, Taft-Hartley, and the Right of Union Members to Resign, 66* Cornell L.Rev. 74 (1980). Accordingly, although the restriction placed on the right to resign in this case may exceed the statutory scheme established in the Act, the fact is that a union may provide a reasonable restriction upon the right to resign in accordance with the policies noted above and may thus balance the right to engage as well as refrain from concerted activity. Again, the Chairman does not subscribe to the view that there is a "fundamental right to be free to resign from union membership" under the National Labor Relations Act.

union. An employee who resigns union membership outside the window period is thereafter effectively compelled to continue to pay full dues even though no longer a union member, and the window period in this circumstance operates as an arbitrary restriction on the right to refrain from union membership and from supporting nonrepresentational expenditures. In light of our duty to uphold the fundamental labor policy of "voluntary unionism" emphasized by the Court in *Pattern Makers*, supra, we agree with the judge that the January window period, as applied solely to employees who resign their union membership after the expiration of the window period, constitutes arbitrary conduct violative of the IAM's duty of fair representation.

We further agree with the judge, for the reasons stated by him, that the IAM's requirements that objections be sent by certified mail, and in individual envelopes, constitute additional arbitrary restrictions on the employees' exercise of their *Beck* rights violative of Section 8(b)(1)(A) of the Act.[65] As the judge observed, the certainty obtained by using certified mail benefits the dues objector primarily and is reasonably a matter vested in the discretion of the individual objector rather than an affirmative requirement prescribed by the IAM. We accordingly agree with the judge's conclu–**[237]**sion that the certified mail requirement is an arbitrary and unnecessary impediment to the exercise of *Beck* rights.

We further adopt the judge's careful analysis of the IAM's requirement that objections be sent in individual envelopes. The judge fully considered the IAM's contention that its individual envelope requirement is necessary to prevent mass *Beck* objec-

---

[65]Member Truesdale would dismiss all allegations that the Union's requirements that objectors submit their objection by certified mail, in individual envelopes, violate Sec. 8(b)(1)(A) and would not order the Respondent to cease these practices. Although he does not adopt the IAM's argument that permitting multiple objections to be submitted in a single envelope may encourage orchestrated, insincere, or coerced objections, he would find that neither of these requirements is arbitrary or evinces bad faith on the Union's part; indeed, in his view these requirements serve the same reasonable purpose as the window period found lawful herein, of providing certainty that an employee's objection was received without mishap and in a timely manner.

tions generated by ideological opponents of unionization or by employer coercion, and to ensure that a *Beck* objection is made as an act of individual conscience. The judge found that a voluntarily registered *Beck* objection, otherwise free of unlawful coercion, may not be rejected based on a union's desire to test the sincerity of the objector. As the IAM's express rationale for the single envelope rule is to so burden the objection process, we are compelled to agree with the judge that that requirement is an arbitrary and unlawful restriction on nonmembers' exercise of their *Beck* rights.

D. *Chargeability Issues*

1. Unit-by-unit accounting

The General Counsel and Charging Parties except to the judge's failure to find that the IAM breached its duty of fair representation by calculating its *Beck* dues allocation on other than a bargaining-unit-by-bargaining-unitbasis. They argue that *Beck* holds that an objecting nonmember may lawfully be charged only for those expenses incurred in the performance of representational activities in the objector's individual bargaining unit. The General Counsel accordingly maintains that the IAM violated Section 8(b)(1)(A) of the Act by charging objectors for expenses incurred outside of their bargaining unit, even if the fruits of those expenditures ultimately inure to the benefit of the objecting employee's own unit.

The IAM does not dispute that it charges for some extra-unit expenses. Rather, the IAM argues that it only charges for those expenses incurred outside the objector's bargaining unit which will benefit or assist the collective bargaining, contract administration, or grievance adjustment functions in the objector's unit. For example, the IAM notes that even though a particular bargaining unit may not choose to take advantage of the IAM's research staff that gathers information concerning collective-bargaining issues, that resource is maintained for the benefit of all individual units. The IAM further argues that it is cost efficient for it to incur these types of expenses on a national level, sharing the cost among many bargaining units, rather than

having each individual bargaining unit do the same research when the need arises.

We agree with the judge, for the reasons set forth by him, that the duty of fair representation does not require the IAM to calculate its *Beck* dues reductions on a unit-by-unit basis. The judge correctly observed that the Supreme Court and the lower courts that have addressed this issue in the public sector and RLA context have not required unit-by-unit accounting, and have declined to follow the procedures urged on us by the General Counsel and Charging Parties.[66] In light of the Supreme Court's refusal to require unit-by-unit accounting in *Lehnert* even under constitutional scrutiny, we find no basis to do so here pursuant to the duty of fair representation.[67] We accordingly adopt the

---

[66] *Lehnert v. Ferris Faculty Assn.*, 500 U.S. at 522-524; and *Crawford v. Air Line Pilots Assn.*, 870 F.2d 155, 158-159 (1989). As the Tenth Circuit explained in *Pilots Against Illegal Dues v. Air Line Pilots*, 938 F.2d 1123 (1991):

> Whatever ambiguity *Ellis* [466 U.S. 435 (1984)] created with regard to expenses incurred by a union outside of a particular bargaining unit was cleared up by the Court in *Lehnert*. Like the plaintiffs here, the plaintiffs in *Lehnert* objected to helping pay for union expenditures outside of their bargaining unit because those expenses did not produce a direct benefit to them. The *Lehnert* Court concluded that "a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit." The Court declared that it had never interpreted the test for germane expenses to require a direct relationship between the expense at issue and some tangible benefit to the dissenter's bargaining unit and that to do so would "ignore the unified-membership structure under which so many unions operate."

Id. at 1127-1128 (citations omitted).

[67] In *Price v. International Union UAW*, 927 F.2d at 93-94, the Second Circuit held that the union's *Beck* policy satisfied its duty of fair representation where the union, upon challenge, had the burden of proving the allocation between chargeable and nonchargeable expenses in the objector's local union. The Second Circuit articulated no requirement that an

judge's dismissal of this allegation. We further adopt the judge's dismissal of the allegation that the IAM acted unlawfully by not allocating and disclosing its chargeable expenses on a unit-by-unit basis. As with unit-by-unit chargeability, if an objector does not accept the IAM's assertion that it has allocated its expenses so that only those that ultimately inure to the benefit of the bargaining unit are being charged, the objector may challenge that assertion in the arbitration proceeding the IAM has provided for in its *Beck* policy. *Price*, 927 F.2d at 94.

2. Litigation expenses

Notwithstanding his conclusion that unit-by-unit accounting is not required to satisfy a union's duty of fair representation, the judge found that the IAM did violate the Act by charging an objector in one bargaining unit for litigation expenses incurred by another bargaining unit. In the absence of Board precedent, the **[238]**judge held that the Supreme Court's decision in *Ellis*[68] compelled him to conclude that litigation expenses be treated differently from all other expenses. We do not read the Court's holding in *Ellis* so broadly, and reverse the judge's findings as to this issue.

Although the IAM argues against a strict unit-by-unit accounting for litigation expenses, it does not defend the chargeability of all litigation expenses incurred by the International and its affiliate District and Local Lodges. Rather, the litigation expenses that the IAM has sought to charge *Beck* objectors, though broader than unit specific, are confined to those which "may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organiza-

---

audit of the expenses of the challenger's specific bargaining unit be performed. An objector may likewise under the IAM's *Beck* policy, upon challenge, receive an audit of the expenditures of his or her specific Local Lodge.

[68]Supra, 466 U.S. 435.

tion."[69] The critical inquiry is thus whether specific litigation that most directly involves employees in one bargaining unit is inherently not "germane to collective-bargaining contract administration, and grievance adjustment"[70] of employees in any other bargaining unit.

We recognize that the Supreme Court considered in *Ellis*[71] and *Lehnert*[72] the question of extra-unit litigation expenses affecting employees governed by the Railway Labor Act and public sector labor statutes, respectively, and has held those expenses nonchargeable to objectors. These holdings were premised on constitutional considerations, however, as the Court explained in *Lehnert*. "Just as the Court in *Ellis* determined that the RLA, as informed by the First Amendment, prohibits the use of dissenters' fees for extra-unit litigation, we hold that the Amendment proscribes such assessments in the public sector." As we stated in section II above, we find precedent grounded in constitutional considerations not to be binding in the context of the NLRA, and we therefore do not read *Ellis* and *Lehnert* as foreclosing our conclusion that some litigation may be of value to employees even when the lawsuit at issue arises out of the contract or circumstances of employees in a different unit. Further, the *Lehnert* plurality opinion explained that its reason for maintaining the unit-by-unit restriction on litigation expenses was to deter the possible burden on free speech raised by "the important political and expressive nature" of extra-unit litigation

---

[69]Supra, 500 U.S. at 524. Indeed, under the IAM's audit protocol, general litigation expenses unconnected to collective-bargaining or other core representational functions, such as the kinds of "political and expressive" lawsuits that concerned the Court in *Lehnert* (id. at 528), are expressly excluded from the amounts deemed chargeable to objectors

[70]*Communications Workers v. Beck*, 487 U.S. at 745.

[71]466 U.S. at 453.

[72]500 U.S. at 528.

that made it "akin to lobbying."[73] The kinds of extra-unit litigation that we contemplate as being properly chargeable to objectors under a union-security clause would not be the kinds of lawsuits that are "akin to lobbying."[74]

Furthermore, as the *Lehnert* Court stated, the Supreme Court cases in this area "prescribe a case-by-case analysis in determining what activities a union constitutionally may charge to dissenting employees." 500 U.S. at 519. On the basis of this cautionary note, plus our experience deciding cases that turn on language in collective-bargaining agreements[75] and our familiar

---

[73] Id. at 528. Justice Marshall, concurring, would have deemed extra-unit litigation expenses chargeable. Id. at 544-549. Justice Kennedy, disagreeing with what he saw as the lack of any "principled basis" for disallowing extra-unit litigation expenses while allowing many other extra-unit expenses, expressed the view that the Court "should avoid establishing rigid categories such as conventions (chargeable) and extra-unit litigation (nonchargeable), but rather examine whether each expense was reasonably or necessarily incurred in the performance of the union's statutory duties as exclusive bargaining representative." Id. at 563-564. See *Beckett v. Air Line Pilots Assn.*, 59 F.3d 1276, 1281 (D.C.Cir.1995), Silberman, J., concurring dubitante (contending that " it is impossible to detect in the Supreme Court cases—particularly Lehnert—a principled basis for distinguishing expenditures that are 'germane' and those that are not" and implying that, as a matter of logic and reality, extra-unit litigation interpreting similar bargaining agreements should be deemed germane to representation of unit members).

[74] In agreeing with his colleagues that litigation may benefit employees when the lawsuit involves another unit or units, Member Truesdale makes no comment regarding the status of extra-unit litigation that is "akin to lobbying."

[75] Our own cases, for example, have familiarized us with the operation of so-called "most favored nations" clauses, under which the wages, benefits, and other working conditions of a particular unit may be affected by clauses in agreements covering other units and even employees of other employers. See, e.g., *Teamsters Local 272* (*Metropolitan Garage*), 308 NLRB 1132, 1133 (1992) (employer entitled, under such a clause, to copies of contracts with other employers both for purposes of contract enforcement and for negotiations on a new contract); and *Chateau Madrid*, 271 NLRB 1075, 1077

ity with the body of arbitral law construing labor agreements,[76] we conclude that union litigation of issues arising in connection with collective-bargain**[239]**ing agreements may confer benefits on employees beyond those units immediately affected. The same can be said for jurisdictional dispute cases, which may constitute evidence of industry or area practice that will influence future cases involving different bargaining units represented by that union. On the basis of such practical considerations, we find that the duty of fair representation does not require unions to segregate litigation costs on a unit-by-unit basis, as long as the categories of litigation charged to objecting employees are related to the union's basic representational functions, and are not the type of political extra-unit litigation that concerned the Court in *Lehnert*.

We shall accordingly apply the same standard for determining the chargeability of litigation expenses as we are required by *Beck* to apply to all other expenses—whether they are germane

---

(1984) (potential effect on wages). Litigation involving the meaning of provisions in other contracts that might be applied to a unit through a most favored nations clause thus clearly can affect that unit.

[76]For example, we are familiar with the principle that an arbitrator resolving issues under a particular contract may invoke "practices of the industry," as well as practices under the contract in that particular unit. *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 579 (1960). Industry practices may be at least partially shaped through litigation. Similarly, although arbitrators, unlike courts, are not bound by stare decisis and may, in some cases, even ignore other arbitral decisions under the same agreement (see, e.g., *Hotel Assn. of Washington, D.C. v. Hotel & Restaurant Employees Local 25*, 963 F.2d 288 (D.C.Cir.1992)), arbitrators can, and frequently do, rely on decisions of other arbitrators rendering awards under different agreements for critical principles of interpretation in resolving contract disputes. See *Farmland Industries*, 103 LA 843, 852 (1994); and *Daily Racing Form, Inc.*, 102 LA 23, 32 (1993). Indeed, arbitrators may even make use of the Board's own caselaw and decisions of courts construing it. See, e.g., *Reed Mfg. Co.*, 102 LA 1, 6-3 (1993) (looking to NLRB caselaw in resolving issue of employer's policy forbidding the wearing of T-shirts with negative slogans relating to a recent strike). Hence, there is a web of collective-bargaininglaw generated outside a given bargaining unit that may benefit the unit employees when disputes under their own agreement arise.

to the union's role in collective bargaining, contract administration, and grievance adjustment—regardless of whether the activities were performed for the direct benefit of the objector's bargaining unit. We thus hold that a union does not breach its duty of fair representation by charging objecting employees for litigation expenses as long as the expense is for "services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization."[77] We believe that this narrowly tailored approach is consistent with the congressional intent in enacting the first proviso to Section 8(a)(3)—to avoid the problem of "free riders"—in those circumstances where the union undertakes litigation on behalf of one bargaining unit which is likely to benefit other bargaining units.[78]

Our holding does not, however, give a union carte blanche to charge an objecting employee for litigation having only a remote or theoretical benefit to the objector's bargaining unit. See *Lehnert*, 500 U.S. at 524. The General Counsel litigated this case on the proposition that extra-unit litigation expenses are necessarily nonchargeable. We disagree with that proposition as a matter of law. We therefore reverse the judge's finding as to this issue and dismiss the allegation.[79]

---

[77] *Lehnert*, 500 U.S. at 524.

[78] Member Cohen would find the violation. As set forth supra, he believes that the RLA cases, dealing with union-security issues, are apposite to NLRA cases involving those issues. In *Ellis*, supra, an RLA case, the Supreme Court clearly held that litigation expenses incurred in one unit cannot be charged to employees in a different unit. Member Cohen considers himself bound by that precedent. He acknowledges that there are arguments contra, and his colleagues have set them forth. However, where, as here, the Supreme Court has definitively resolved a statutory issue, the Board is not free to ignore that pronouncement.

[79] We adopt, in the absence of exceptions, the judge's finding that the IAM's charging of objecting employees for legislative expenses violated the Act. We note that the IAM admitted the expenses themselves were not properly chargeable, and based on our findings above we would not find such expenditures nonchargeable because they were allocated on other than a unit-

E. *Information Provided to Objectors*

The General Counsel alleges that the IAM violated Section 8(b)(1)(A) of the Act by failing to provide objectors with sufficient information to determine whether to challenge the IAM's dues-reduction calculations. We agree with the judge that the information provided to objectors by the IAM since 1990 satisfies its duty of fair representation.

The IAM's *Beck* policy provides that, upon the receipt of an objection, the IAM sends the objector information detailing the percentage reduction in dues based on the previous year's expenses, as well as a summary of the major categories of expenditures, showing how the reduction was calculated. Since 1990, the IAM has further provided objectors with a summary of the District and Local Lodge surveys that comprise the District and Local portion of the dues reduction. The IAM does not, however, provide objectors with the supporting schedules mentioned in the summary of District and Local Lodge surveys, nor the IAM's audit protocol on which it relies to determine chargeability.

Following receipt of the above-described information, the objector has 30 days within which to file a challenge to the IAM's dues-reduction calculations. All charges are thereafter consolidated in a single arbitral proceeding, wherein the IAM bears the burden of justifying its dues-reduction calculations before an arbitrator chosen through the American Arbitration Association's Rules for Impartial Determination of Union Fees.

The General Counsel argues that the information disclosed to objectors is unlawfully insufficient because it does not include the supporting schedules and audit protocol described above. We do not agree. The summary of the surveys of District and Local Lodge expenditures provided to all objectors since 1990 discloses the major categories of union expenditures. The judge correctly observed that courts that have considered the information to be provided objectors in the public sector context require only that the union's major categories of expenditures be

---

by-unit basis.

disclosed.[80] We adopt this standard, and find that the IAM's provision of information disclosing the major categories of union expenditures provides sufficient information to enable objectors to determine whether to challenge the dues-reduction calculations, and accordingly satisfies the duty of fair representation.[81]

[240] 1. Mixed category expenditures

The information provided to objectors sets forth certain "mixed" categories of expenditures which may include both chargeable or nonchargeable items. It discloses that certain categories of expenses, such as human rights, community services, and special projects, are deemed partially chargeable, but further explanation is not supplied. The judge found that the mixed category information provided to objectors need not be further explained in order to satisfy the requirements of *Beck*.

The General Counsel and the Charging Parties have excepted to this finding. They essentially contend that categories of expenditures contained in the information provided to objectors must be self-evident from their labeling as either representational or nonrepresentational, or otherwise greater disclosure is required.

We agree with the judge that the IAM's policy with respect to mixed categories is neither arbitrary, discriminatory, nor undertaken in bad faith. The judge correctly warned of the

---

[80] *Chicago Teachers' Union Local 1 v. Hudson*, 475 U.S. at 307 fn. 18; *Dashiell v. Montgomery County*, 925 F.2d 750, 756 (4th Cir.1991); and *Gilpin v. American Federation of State, County & Municipal Employees, AFL-CIO*, 875 F.2d 1310, 1316 (7th Cir.1989).

[81] We agree with the judge that the IAM's failure to provide summaries of the surveys to objectors in 1988 and 1989 violated Sec. 8(b)(1)(A), but because that information is now provided to objectors, no specific remedial relief for that violation is necessary.

Having found above that the IAM is under no duty to account for expenditures on a unit-by-unit basis, it follows that the failure to furnish such accountings to objecting employees also does not violate the Act. We accordingly agree with the judge that the complaint paragraphs that allege as unlawful the IAM's failure to provide unit-by-unit information must be dismissed.

potential for unlawful manipulation by a union hiding nonchargeable expenses in such mixed categories. The judge recognized that there is no contention in this proceeding, however, that the mixed categories were unreasonably large so as to suggest that the IAM was attempting to hide nonchargeable expenses in these mixed categories. Absent such an allegation of manipulation, we agree with the judge that the *limited* use of mixed categories does not breach the duty of fair representation where, as here, the union clearly discloses the major categories of expenditures.

The fundamental purpose of providing objectors with information regarding the allocation of chargeable and nonchargeable union expenditures is to allow an employee to decide whether there is any reason to mount a challenge to the union's dues reduction calculations. *Gilpin v. American Federation of State, County, & Municipal Employees*, 875 F.2d at 1316. See *Dashiell v. Montgomery County*, 925 F.2d at 756. Both the Seventh Circuit in *Gilpin* and the Fourth Circuit in *Dashiell* found the limited use of mixed categories to be permissible under constitutional scrutiny in the public sector context, citing: (1) the impracticality of providing to employees all backup data for such mixed categories; (2) the slight burden imposed on an objector to challenge such mixed categories by merely writing a letter to the union; and (3) the fact that on such challenge the union bears the burden of demonstrating before an independent arbitrator that its calculations with respect to mixed categories are justified. Id. We find these considerations to be equally applicable to the limited use of mixed category expenditures in the NLRA context, and consistent with the central objective of providing objectors with sufficient information to decide whether there is any reason to mount a challenge. We accordingly find that the IAM's limited use of mixed category expenditures in the circumstances of this case does not violate the duty of fair representation.

2. Verification of expenditures

The General Counsel has not alleged any infirmity in the verification procedures used by the IAM itself, which is undertaken by an independent firm of certified public accountants.

Rather, the General Counsel has alleged that the verification procedures for District and Local Lodges are unlawful because: (1) the expenditures by District and Local Lodges are not verified by an independent auditor; and (2) the allocation of chargeable and nonchargeable expenditures for District and Local Lodges is not verified by an independent auditor. Rather, the audits of District and Local Lodges are performed by in-house auditors employed by the IAM. The judge dismissed these allegations.

The General Counsel and the Charging Parties in their exceptions challenge the audits performed at the District and Local levels on two grounds: first, their reliability, because the auditors in some instances lack formal education and training in auditing procedures; and second, their independence, because the auditors are employees of an institution with which the audited entities are affiliated. In support of their position, they rely on Supreme Court authority in *Hudson* for the proposition that information provided to nonmembers should include "verification by an independent auditor."[82]

We have concluded above, however, that the procedures required to protect the constitutional rights of objectors in the public sector, including those defined and elaborated on in *Hudson*—save for the issue of notice **[241]**as explained supra—were not formulated to comport with a union's obligations under *Beck* to represent its employees fairly. We therefore

---

[82] *Hudson*, 475 U.S. at 307 fn. 18. As the Court of Appeals for the Fourth Circuit noted in *Dashiell*, 925 F.2d at 756, the more exacting accounting standards in *Hudson* derive from first amendment intolerance of any compulsory subsidization of fees under a state-authorized agency shop:

> The core principle underlying all of the decisions prescribing allocation procedures [including an independent audit requirement] is that the correct amount of a service fee to be charged nonunion employees for collective bargaining must be established to the extent practicable, *in advance*. . . . Both *Hudson* and *Abood* rest on the observations of Thomas Jefferson and James Madison "about the tyrannical character of forcing an individual to contribute even 'three pence' for the 'propagation of opinions which he disbelieves.' "[Emphasis in original. *Hudson*, 475 U.S. at 305; see also *Abood*, 431 U.S. at 234 fn. 31.]

reject the General Counsel's and the Charging Parties' arguments based on these constitutional authorities, and shall examine whether the use of auditors employed by the IAM to conduct audits of the District and Local affiliates satisfies the IAM's duty of fair representation.

We first agree with the judge that the IAM did not violate its duty of fair representation by failing to use an independent auditor to determine the allocation of chargeable and nonchargeable expenditures of District and Local Lodges. As the Fourth Circuit has explained, such a requirement has not been imposed even in the public sector context:

> We have found no circuit decision which supports the contention that an independent auditor is required to make the legal determination as to that which is chargeable and that which is not in order to satisfy the requirements of Hudson.[83]

Dashiell, 925 F.2d at 755. See *Andrews v. Education Assn. of Cheshire*, 829 F.2d at 335; *Gwirtz v. Ohio Education Assn.*, 887 F.2d 678 (6th Cir.1989), cert. denied 494 U.S. 1080 (1990); *Ping v. National Education Assn.*, 870 F.2d 1369 (7th Cir.1989); *Kidwell v. Transportation Communications Union*, 731 F.Supp. at 192; and contra *Hohe v. Casey*, 727 F.Supp. 163, 167 (M.D.Pa.1989). We accordingly cannot find that the IAM violated its duty of fair representation by using in-house auditors, rather than an outside auditor, to determine the allocation of expenses between chargeable and nonchargeable categories for District and Local Lodges. We have carefully considered the contention pressed by the General Counsel and the Charging Parties in their exceptions that the in-house auditors nonetheless

---

[83]The Supreme Court stated in *Hudson* that "[t]he Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor." 475 U.S. at 292 fn. 18. We note that the Court in *Hudson* did not specifically define the subject matter to be verified by the auditor, nor the definition of an "independent" auditor.

have insufficient training to make such allocation determinations, and find that the record does not support that conclusion.[84]

The Second Circuit has made clear that in the NLRA context "*Hudson* requires only that the usual function of an auditor be preformed, i.e. to determine that the expenses claimed were in fact made." *Price*, 927 F.2d at 93. The judge rejected the contention that the IAM's in-house auditors lack the necessary training or objectivity to fulfill the required function of determining whether the expenses claimed by the District and Local Lodges were in fact made.

We agree with the judge's conclusion that the IAM did not breach its duty of fair representation by using in-house auditors to verify the expenditures of the District and Local Lodges. The judge found that the IAM staff auditors who perform the verification audits of the District and Local Lodges are "experienced trade union agents and have accounting training, but they are not certified public accountants." While the General Counsel does not argue that the expenditures of the District and Local Lodges must be audited by a certified public accountant,[85] he maintains that some lesser, though unspecified, level of formal education and training is necessary to perform verification audits. We note that each IAM staff auditor has some level of accounting training, has served as a Local or District treasurer and, as noted above, reviews District and Local Lodge expenditures according to an audit protocol developed by the IAM with an outside consultant. We accordingly agree with the judge's conclusion that the General Counsel has not demonstrated that

---

[84]The in-house auditors receive training regarding chargeability determinations from the IAM legal staff and an outside consultant. In making their chargeability determinations, the auditors use an audit protocol developed by the IAM in conjunction with an outside consultant.

[85]Some of the Charging Parties do, however, advocate a CPA requirement, citing public sector jurisprudence mandating such a requirement. See *Tierney v. City of Toledo*, 824 F.2d at 1506. We adopt the judge's finding that CPA certification is not required even under *Hudson*—which rather requires an "independent auditor." A fortiori, it is not a necessary qualification for IAM auditors to discharge the IAM's *Beck* obligations.

the verification of expenses tasks at issue here are beyond the skills of the IAM auditors.

The judge further found, and we agree, that the General Counsel has not established that the objectivity gained from the use of an "independent" auditor necessarily excludes the use of IAM staff auditors to review District and Local Lodge expenditures. Noting that the Board has required unions to justify hiring hall fees charged to nonmembers but without requiring audits by outside accountants,[86] the judge declined to articulate an outside auditor requirement.[87]

We do not accept the premise advanced by the General Counsel that the independence necessary to prepare verification-of-expense audits of District and Local Lodges consistent with a union's obligations under *Beck* can never be assured when there is an employer-employee relationship between the auditors and the IAM. First, the IAM here takes significant steps to **[242]**assure objectivity in the performance of the audits of District and Local Lodges by forbidding the assignment of an auditor to perform an audit of a District or Local for which he or she currently works or has worked previously. Further, no auditor is ever assigned to audit the books of a lodge in which the auditor had membership. Second, there is no contention that the IAM's auditing staff has performed its work in a less than honest, unbiased, or objective manner.[88] Third, we fully agree

---

[86]See, e.g., *Stage Employees IATSE Local 649* (*Associated Independent Theater*), 185 NLRB 552 (1970).

[87]The Respondent Unions note correctly that 13 years after the union-security provisions to Sec. 8(a)(3) were amended, Congress, in reconciling the Senate and House bills of what was to become the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 431, specifically considered and rejected a House proposal to impose independent auditing requirements for International unions (the House having itself reported out of committee and passed a bill that rejected proposals requiring independent audits for local unions). H.R.Conf.Rep. No. 1147 at § 201 (1959).

[88]We note that the judge found that the audits of the District and Local Lodges performed by in-house auditors are "thereafter addressed by the IAM's Independent Auditor," although the record does not delineate the precise nature of the duties of the outside auditor in this regard.

with the judge that the IAM has an institutional interest in obtaining objective expenditure audits of its affiliates for legal and financial reasons unrelated to the IAM's obligations under *Beck*.

The fundamental purpose for requiring an audit of union expenditures is to provide objecting nonmembers with a reliable basis for calculating the fees they must pay.[89] We find that the IAM's decision here to audit its affiliate District and Local Lodges with in-house auditors does not violate this central objective, and was not undertaken arbitrarily, discriminatorily, or in bad faith, in violation of the duty of fair representation.

Our holding in this regard is squarely supported by *Price* in which the Second Circuit found that the UAW's *Beck* procedures satisfied its duty of fair representation. In *Price*, the UAW did not conduct any audit of local affiliates. Rather, the UAW used a "local presumption," by which the International UAW "assume[d] for accounting purposes that the allocation between chargeable and non-chargeable expenditures for the [International] UAW is equivalent to the allocation for each of its 1,189 local unions." 927 F.2d at 93. The Second Circuit approved of the use of the local presumption, observing that upon a challenge filed by an objecting nonmember, the union bears the burden of proving that the expenditures of the challenger's specific local union are chargeable to the degree asserted. Likewise, where the IAM here has in fact undertaken to audit a limited number of local unions, and upon challenge an objecting nonmember receives an audit of his or her specific local union and the union bears the burden of proving that allocation, we cannot find that the IAM here violated its duty of fair representation.[90]

---

[89] *Abrams*, 59 F.3d at 1381.

[90] For the same reasons that the Second Circuit concluded that the use of a local presumption satisfies the duty of fair representation, we find meritless the contention of the General Counsel and certain Charging Parties that the IAM unlawfully audits only a limited number of affiliates. In addition, we note that the General Counsel has not specifically alleged or litigated whether the method of computation used by the in-house auditors to make chargeability determinations for District and Local Lodges violates the duty of fair representation. Compare *Abrams v. Communications Workers*, 59 F.3d

F. *Procedures for Challenging Dues Reduction*

The General Counsel additionally alleges that the IAM's *Beck* policy is unlawful because nonmembers who challenge the IAM's dues reduction calculations bear their own travel costs to the arbitration hearing. We agree with the judge that the duty of fair representation does not require a union to bear the travel costs of challengers.

As noted above, the IAM's *Beck* policy provides that all challenges to its dues reduction calculations are consolidated for arbitration in late fall. The IAM locates the arbitration at a site central to the majority of the challengers. The IAM bears the cost of the arbitration, while challengers are responsible for their own costs for travel, lost time, and attorneys fees, if any. Challengers may present their case before the arbitrator either personally or in writing.[91] The IAM further informs challengers that participation via conference call with the arbitrator may be arranged at the challenger's option.

The judge correctly observed that a union may violate its duty of fair representation by imposing arbitrary or otherwise unreasonable obstacles to participation in the resolution of challenges to dues-reduction calculations. The record evidence establishes that no such obstacles have been imposed by the IAM. The IAM has provided several options for challengers to participate in the arbitral process, including reasonable accommodation for those unable or unwilling to attend the arbitration. And once a challenge is filed, the burden of proof before the arbitrator in establishing the expenditures validly chargeable to nonmembers rests with the union. See *Price*, 927 F.2d at 94. We cannot conclude in these circumstances that the IAM's arbitral

---

at 1381 (union's method of computation for accounting found to be lawful). While the Charging Parties in their exceptions do make some limited attacks on the method for making chargeability determinations for District and Local Lodges, it was solely the outside auditor requirement that was litigated by the parties and addressed by the judge.

[91]The IAM's *Beck* notice specifically provides that a challenger may participate in the arbitral proceeding by written submission.

procedures are arbitrary, undertaken in bad faith, or otherwise unreasonably obstructive of the exercise of *Beck* rights. The IAM's procedures at issue here fall well within the wide range of reasonableness afforded a union in discharging its duty of fair representation.

The General Counsel nevertheless argues that a union must be required to locate multiple arbitration hearings at or near individual challengers' places of employment or, alternatively, bear the travel costs of challengers to the consolidated arbitration. We cannot conclude that these procedures urged by the General Counsel are required in order to satisfy the duty of fair representation.

[243]A requirement that separate arbitral proceedings be held near each challenger's home subjects all participants to the risk of conflicting results among different arbitrators. Potential litigation and continuing controversy concerning conflicting arbitral awards would not advance the principles animating the *Beck* decision. Reasonable expedition and finality in determining dues reduction calculations are in the interest of all participants in the arbitral process.

Multiple arbitral proceedings would further entail significant additional union expenditures that are not required in order to satisfy the duty of fair representation. The Supreme Court has underscored that fair representation principles are vindicated by "afford[ing] individual employees redress for injuries caused by union misconduct without compromising the collective interests of union members in protecting limited funds." *Electrical Workers v. Foust*, 442 U.S. at 50. We find that the IAM's consolidated arbitration procedure strikes an appropriate balance between the rights of individual employees and the interests of the bargaining unit as a whole.

Nor can we agree with the General Counsel's alternative proposal that the IAM be required to pay for challengers' travel costs to the arbitral proceeding. Such a requirement would constitute a departure from the "American Rule" which, under most circumstances, requires litigants to bear their own costs of litigation.[92] The Board has, for example, never required a union

---

[92]See *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975).

to pay the expenses of its members to attend its conventions, even when the employees may wish to challenge the actions of the union officers at the convention.

We accordingly find that the IAM's arbitration policy for challenging the dues-reduction calculation satisfies its duty of fair representation.

IV. LOCAL ISSUES

1. Dynamic Controls

The complaint alleges, that the Local Lodge 354 violated Section 8(b)(1)(A) by failing to notify three employees of their *Beck* rights upon their resignation from the Union and thereafter continued to charge them full dues.[93] Because the judge found that the Union was under no obligation to notify employees of their *Beck* rights at all, he dismissed the allegations. The General Counsel excepts to the judge's dismissal of the allegations, arguing, as it had with respect to the *Beck* policy itself, that the Union was obligated to notify employees at the time they are hired and when they resign from the Union.

Employee Mark Bluteau was hired November 20, 1989. There is no dispute that he was not informed of his *Beck* rights when he joined Local 354 soon after he was hired, or at any other relevant time.[94] When Bluteau resigned his union membership by letter to Local 354 dated February 2, 1990, he also did not receive notice of his *Beck* rights.

By letters dated May 9 and 31, 1990, Local 354 acknowledged Bluteau's resignation from the Union and informed him that, although he was an agency fee payer, he must still pay the full amount of dues. The letter concluded that, inasmuch as he had failed to make any dues payment for March and April, he was required to pay full dues for those months and for each

---

[93]The complaint does not allege that the Local Lodge 354 unlawfully failed to provide the three employees with initial notice of their *Beck* rights prior to their resignations.

[94]The December Machinist typically is mailed out to unit employees near the end of November.

month thereafter. By letter to Local 354 dated June 5, 1990, Bluteau asserted his *Beck* rights and refused to pay the full dues requested.

In an August 13, 1990, letter, IAM's general secretary/treasurer, Tom Ducy, informed Bluteau that his objection had been perfected as of February 1990 and that any overpayment of dues would be refunded to him. He also was informed of his new dues rate, based on the previous year's percentage reduction; and this information supplied to him included a summary of the major categories of expenditures to support the reduction. On March 20, 1991, Local 354, citing Bluteau's failure to pay the reduced fees from April 1990 through February 1991, informed him that, if he did not pay the amounts specified, the Union would seek his discharge pursuant to the union-security clause of the collective-bargaining agreement. Bluteau paid the arrearage.

On July 23, 1991, Bluteau was again notified that he owed dues from March through July 1991, and informed that he must pay the arrearage by August 2, 1991, or face discharge. Local 354 also informed him that all dues paid by him would be held in escrow pending the outcome of his unfair labor practice charges challenging the Union's *Beck* policy.

Employee Martha Payne was hired into the bargaining unit on June 19, 1989, and joined Local 354 soon after. The parties stipulated that she did not receive the December 1989 Machinist, in which the Union's *Beck* policy is published, and there is no claim that she was otherwise notified of her *Beck* rights at any relevant time. On March 13, 1990, Payne sent a *Beck* objection to Local 354 and resigned her union membership. On May 9, 1990, Local 354 sent Payne a letter acknowledging her resignation from the Union, but informing her that, inasmuch as her objection was untimely, she owed the full amount in dues.

[244]On August 13, 1990, Thomas Ducy informed Payne, as he had Bluteau, that the Union would consider her a perfected dues objector as of March 1990 and told her what her new rate would be. All dues paid by Payne have been placed in an interest-bearing escrow account.

Gene Dinsmore had been a union member since he was hired in May 1967. Dinsmore testified that he received the Machinist regularly, but did not read it and did not see the

Union's *Beck* policy published therein. On March 26, 1990, Dinsmore sent Local 354 a dues-objection letter which was also considered by the Union as a membership resignation. Local 354 acknowledged receipt of his resignation and *Beck* objection but continued to seek full dues for 1990 because his objection was untimely.

The complaint alleges that the failure of Local Lodge 354 to inform Bluteau, Payne, and Dinsmore of their *Beck* rights at the time of their resignation from the Union violated its duty of fair representation owed to these three employees. As noted above, the judge dismissed this allegation as to all three employees, because he found that no notice of *Beck* rights was required under the Act. Although we have determined that an employee's resignation from the union does not trigger a union's obligation to inform them anew of their right to pay a reduced fee, we have held that notice to that effect is required at least once in order to comply with *Beck*. With respect to Bluteau and Payne, there is no dispute that the Union did not notify them of their *Beck* rights either at the time they were hired or at any other time prior to their resignations from the Union. Thus, because they were not made aware of their rights to pay a reduced fee and the procedures for perfecting that right, we reverse the judge and find that Local Lodge 354 violated Section 8(b)(1)(A) with respect to them.

The same is not true in connection with the allegation concerning Gene Dinsmore, however. Dinsmore was a long-term employee who admittedly received the Machinist regularly. That he chose not to read it, as we have noted above, does not translate into a breach by Local 354 of its duty to him. Local 354 was not obligated, simply by virtue of Dinsmore's resignation from the Union, to inform him again. Accordingly, we adopt the judge's dismissal of the allegation concerning Dinsmore.[95]

---

[95]For the reasons stated in section III(C) and fn. 79, above, we adopt the judge's findings that Local 354 violated Sec. 8(b)(1)(A) by applying its January window period and thereby restricting Bluteau, Payne, and Dinsmore from perfecting their dues objector status, and further violated Sec. 8(b)(1)(A) by thereafter continuing to collect from them legislative expenses that were admittedly nonchargeable. By charging the three employees for legislative expenses and threatening to seek their discharge for nonpayment,

2. Electric Boat

The issues in this case are whether Local Lodge 1871 violated its duty of fair representation by failing to account for its chargeable and nonchargeable expenditures on a unit-by-unit basis and by charging objecting nonmembers for legislative expenses not directly incurred on behalf of their bargaining unit. Consistent with our findings above in section III(D)(1) that there is no obligation to engage in unit-by-unit accounting, we adopt the judge's dismissal of this aspect of the complaint. In the absence of evidence that the Local's litigation expenses would not ultimately inure to the benefit of members in the Electric Boat bargaining unit, we reverse the judge and find in accordance with our discussion above in section III(D)(2) that the Local did not violate the Act by charging the objecting employees for such expenses. Finally, in light of the IAM's admission that legislative expenses are nonchargeable, we adopt the judge's finding that the Local violated Section 8(b)(1)(A) by charging the objectors for such expenses.

3. California Saw

---

we further agree with the judge that Local 354 violated Sec. 8(b)(1)(A).

However, for the reasons stated in sec. III(D)(2), we reverse the judge and find that Local 354 did not violate the Act by charging the three employees for nonunit litigation expenses and threatening to seek their discharge for nonpayment of these expenses. And, for the reasons stated by the judge, we find that Local 354 did not violate the Act by failing to engage in a unit-by-unit accounting for all its expenses.

Consistent with his view set forth in fn. 41, supra, Member Cohen does not find that the Machinist publication provided Dinsmore sufficient notice of his *Beck* rights and would find a violation in this regard. Also, consistent with his view set forth in fn. 78, supra, Member Cohen adopts the judge's finding that Local 354 violated Sec. 8(b)(1)(A) by charging Bluteau, Payne, and Dinsmore for nonunit litigation expenses.

As discussed supra at fn. 78, Member Cohen concludes that out-of-unit litigation expenses are not legally chargeable. Accordingly, he would find a violation here.

The single issue presented in this case is whether California Saw and Knife (the Employer) violated Section 8(a)(3) and (1) of the Act by discharging Peter Podchernikoff at the Unions' request, pursuant to the applicable union-security clause. We agree with the judge that the Employer acted lawfully because it lacked a reasonable belief, within the meaning of the second proviso to Section 8(a)(3),[96] that the discharge was being requested for any reason other than a failure to pay "periodic dues" and "initiation fees" that **[245]**could properly be imposed upon him under the union-security clause.[97]

a. *Factual findings*

Peter Podchernikoff was a long-term employee of the Employer and a member of Local 1327.[98] In early 1989, Podchernikoff, contemplating relocating to another area, requested and received a leave of absence from the Employer from May 23 through November 22, 1989.

When an employee takes a leave of absence, he can obtain a withdrawal card from the union upon application and a $2 fee, which puts his membership in stasis, and he is not required to pay dues during that time. On returning to work, the employee

---

[96]That proviso states that an employer will violate Sec. 8(a)(3) if it discharges an employee at the union's request

> (B) if [the employer] has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership[.]

[97]On August 27, 1992, the Board, by Order of the Executive Secretary, granted the parties' motion to withdraw charges in Cases 34-CB-1440-63 and 34-CB-1440-64 alleging that the Unions violated Sec. 8(b)(1)(A) and (2) of the Act by requesting the discharge of Podchernikoff. Accordingly, the judge's findings of violations against both entities are deleted from the revised Order and amended conclusions of law.

[98]Local Lodge 1327 is a member of District Lodge 115 and the agent for the District Lodge and the International in administering the collective-bargaining agreement.

is required to pay a $10 fee and resume paying monthly dues. Podchernikoff asked Union Business Representative John Moran if he could obtain a withdrawal card from the Local. Moran told him that doing so would save him from having to pay a reinstatement fee when he returned. Raymond Ceballos, secretary/treasurer of Local Lodge 1327, mailed Podchernikoff a withdrawal card application, but he did not return it to the Union. Pursuant to the IAM's constitution, a member's membership lapses following 2 months of unpaid dues. When the Local did not receive dues from Podchernikoff in May and June, it decided that his membership had lapsed.

When the Local learned that Podchernikoff had returned from his leave of absence, sometime in late December 1989, Ceballos notified Podchernikoff that he owed a $125 reinstatement fee to the Union because he had let his membership lapse. (Ceballos learned about Podchernikoff's return by virtue of the Local's being called on to resolve a grievance that Podchernikoff filed against the Employer after his return from his leave of absence.) Podchernikoff did not, at this time, voice opposition to being reinstated into full membership; rather, he expressed the view that the Employer should pay the reinstatement fee because it had defaulted on what Podchernikoff viewed as its responsibility for notifying him about his right to obtain the withdrawal card when he took the leave of absence.

In early January 1990, Podchernikoff sent the Local a check for $36 for his "December dues"; the Local called him and said the $36 would be applied to his outstanding reinstatement fee. Thereafter, by letter to the Employer dated January 30, 1990, the Local requested Podchernikoff's discharge for failure to pay the full amount of the reinstatement fee.

On receipt of the demand, the Employer contacted Podchernikoff, who contested the propriety of the fee. The Employer then wrote to Ceballos on February 2, 1990, explaining Podchernikoff's position and requesting further information. Ceballos replied on February 6, 1990, that Podchernikoff had been delinquent in his dues and his membership had lapsed in June 1989, that he had been apprised before that time how to obtain a withdrawal and avoid the fee, and that he had simply failed to apply for the withdrawal.

By a letter dated February 5, 1990, sent to the Local, with copies to the Employer and others, Podchernikoff officially resigned his union membership, stated an intent to be a financial core member, and objected to paying dues in any amount above those attributable to the Unions' representational expenses. Podchernikoff obtained the services of counsel who sent the Employer a letter dated February 8, 1990, containing factual and legal arguments contending that the Local's discharge request was improper. The letter not only raised the legal issue on which the General Counsel now argues—that the Employer lacked a reasonable basis for believing that the discharge was lawfully requested (an issue relating to the demand for a reinstatement fee)—but also raised issues relating to the proper basis for determining the amount of dues that could be charged to Podchernikoff. The recitation of arguments included both legal contentions that we have found meritorious in this proceeding and others that either we or the judge have rejected.[99]

Counsel for Local 1327 and District 115 responded with opposing factual and legal arguments supporting its position that the discharge demand was proper on the basis of both the unpaid reinstatement fee and a dues arrearage. Thereafter, District Lodge 115 wrote to Podchernikoff detailing the specific amount of his arrearage and informing him that unless he paid the amounts by March 5, 1990, it would demand that the Employer discharge him. Podchernikoff refused to pay the amounts requested.

On March 6, District Lodge 115 demanded that the Employer discharge Podchernikoff. On March 9, Podchernikoff met with the Employer and District Lodge officials, and the latter offered to place the disputed amount in escrow pending the outcome of litiga–**[246]**tion on the issue. Podchernikoff refused and was discharged.

---

[99]Examples of rejected arguments are contentions that the Local's demand for Podchernikoff's discharge was retaliatory (rejected by the judge and no longer at issue because of the withdrawal of the relevant 8(b)(1)(A) and (2) charges), and that the Union could not demand from Podchernikoff dues in any amount reflecting expenses calculated on other than a unit-by-unit basis, an argument which we have now rejected.

b. *Analysis of the reasonable belief issue*

The judge found that the District Lodge's demand for Podchernikoff's discharge was unlawful. He reasoned that since Podchernikoff was not required to pay dues while he was on leave under the provisions of the union-security clause and had tendered dues after he returned from leave, the District Lodge's demand for discharge was—under the prohibitive language of the second proviso to Section 8(a)(3)— "for reasons other than [his] failure . . . to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership."

With respect to the Employer, however, the judge found that it had reasonable grounds to believe the discharge request was valid and, therefore, dismissed the complaint allegation against it. Citing *NLRB v. Zoe Chemical*, 406 F.2d 574 (2d Cir.1969); and *G & H Products Corp.*, 139 NLRB 736 (1962), the judge found that the Employer made every reasonable effort to investigate the circumstances surrounding the demand, and sought legal counsel concerning the many complex legal questions raised by Podchernikoff's letter that were governed by conflicting and developing case law. The judge thus found that the Employer had reasonable grounds to conclude, in the face of unsettled case law, that the discharge demand was proper, despite the judge's ultimate conclusion to the contrary.

The General Counsel, citing the second proviso to Section 8(a)(3), argues in its exceptions that the issues surrounding the demand for Podchernikoff's discharge did not involve the legal complexities described by the judge. Rather, the General Counsel contends that the Employer and the Union "were unabashedly treating Podchernikoff as one who was interested in membership status when this was far from the case," and that under *Spector Freight System*, 123 NLRB 43 (1959), Podchernikoff could not have been required to pay a reinstatement fee to rejoin the Union after his membership lapsed when he had no desire to become a member of the Union.

The Charging Party argues in its exceptions that the judge erred in finding the Employer's good faith a defense to the alleged violation because an employer's intent is not an element of a violation under Section 8(a)(3) (citing *Radio Officers v.*

NLRB, 347 U.S. 17 (1954)). The Charging Party further contends, as he had to the judge, that the Union's fiduciary obligations under *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962), ought to be extended to employers when the union seeks an employee's discharge under a union-security clause.

We agree with the judge that the allegations against the Employer regarding Podchernikoff should be dismissed under the principles set out in *NLRB v. Zoe Chemical Co.*, supra, and in Board precedent cited by the court in that decision. By virtue of the first proviso to Section 8(a)(3), an employer that is bound to a union-security clause negotiated with the 9(a) bargaining representative of its employees will not be deemed to have committed an unfair labor practice if it discharges an employee at the union's request for failure to tender dues and fees owed pursuant to the clause. This immunity is lost, pursuant to the second proviso to Section 8(a)(3), if the employer has reasonable grounds to believe that the discharge was actually requested for reasons other than the employee's failure to make the requisite dues and initiation fees tender.[100] In determining whether such grounds exist, an employer has a duty of inquiry, "only . . . where the employer is aware of . . . facts that would lead [it] to believe that the discharge may be for an improper purpose," but that duty is not, however, "exhaustive, and the extent of the duty, if any, will vary from case to case." *H.C. Macaulay Foundry v. NLRB*, 553 F.2d 1198, 1202 (9th Cir. 1977), citing *Zoe Chemical*, 406 F.2d at 583. Thus, contrary to the Charging Party's contention, a strict liability standard is inappropriate here, and the

---

[100] Although the Second Circuit denied enforcement of the Board's decision finding liability against the employer in *Zoe Chemical*, supra, the disagreement between the court and the Board turned primarily on how much weight to assign evidence that several of the employees whose discharges were sought had claimed to an employer representative that they had tendered dues at some point. As to the legal standard, the court relied on other Board cases, e.g., *Associated Transport*, 169 NLRB 1143 (1968); and *G & H Products Corp.*, supra.

reasonableness of the employer's assessment of the legality of the Union's discharge request may be a defense.[101]

In agreeing with the judge that, under all the circumstances, the Employer in this case met the reasonable belief standard, we rely on the Employer's effort to gather relevant facts and statements of position from [247]the Union and employee Podchernikoff before acting, the multiplicity of issues asserted by both sides bearing on the issue of Podchernikoff's liability under the union-security clause, and the unsettled state of the law with respect to many of those issues.

As noted above, the Employer did not simply proceed to discharge Podchernikoff when it received the Local's January 30 discharge request. Rather, it contacted Podchernikoff, sought further information from the Local in the face of his protest, and then considered what amounted to legal briefs served on it by each side in the controversy. The only matter that appeared to be at issue pursuant to the Local's January discharge demand was whether Podchernikoff could lawfully be required to pay a reinstatement fee as a condition of continued reemployment—a question which the judge concluded turned on whether Podchernikoff desired to rejoin the Union. Thus, the judge

---

[101] *Radio Officers*, supra, relied on by the Charging Party, is inapposite because it did not concern defenses raised under the proviso at issue here. Indeed, only two of the three consolidated cases before the *Radio Officers* Court involved charges against an employer; and one of those concerned wage discrimination (347 U.S. at 34-38), while the other involved a union's successful demand for a reduction of an employee's seniority as a penalty for late payment of dues, where there was no valid union-security clause in effect (id. at 24-28).

We also note, as the Second Circuit pointed out in *NLRB v. Sucrest Corp.*, 409 F.2d 765 (1969), that the inclusion of the "reasonable grounds" language in the second proviso distinguishes it from the first proviso requirement of 9(a) status for the union with which the union-security clause is negotiated. In enforcing the Board's Order in *Sucrest*, the court distinguished its decision in *Zoe Chemical*, supra, agreeing that the Board could properly hold the employer liable regardless of whether it had a good-faith belief that the union requesting the discharges at issue was a 9(a) representative, because the drafters of the 8(a)(3) provisos had not used language suggestive of a good- faith defense in the first proviso. Id. at 771-772.

agreed with the Union that if Podchernikoff's intent was to regain his former union membership, then the cases permitting the imposition of a reinstatement, or reinitiation, fee might have applied,[102] rather than *Spector Freight*, supra, on which the General Counsel relied. As set out above, however, Podchernikoff's intentions respecting membership were not entirely clear until his February 5 resignation letter.[103] Further, in the subsequent exchange of letters, it appeared that Podchernikoff was refusing to pay monthly dues in amounts that the District Lodge contended were owed even by nonmembers under the union-security clause. The opposing positions regarding the dues amount that Podchernikoff was obligated to pay involved largely unsettled areas of the law which we have now addressed in this case. When matters came to a head during the March 9 meeting attended by Podchernikoff and representatives of both the District Lodge and the Employer, the Employer was faced with Podchernikoff's refusal even to pay into escrow the dues which the District Lodge claimed were owing. We agree with the judge that, under all the circumstances, the Employer's decision to discharge Podchernikoff at that point, and therefore avoid possible contract liability to the Union for breach of the union-security clause, reflected a reasonable, even if mistaken, belief that Podchernikoff's discharge was lawfully demanded for his failure to pay dues. Clearly, any attempt to make further inquiries into the merits of the opposing positions would not have led the Employer "to a prompt and certain resolution of [its] doubts."[104]

4. Aerojet

---

[102]See, e.g., *Simmons Co.*, 150 NLRB 709 (1964).

[103]As noted at the beginning of this section, because the charges against the Unions were settled, we need not decide the question concerning the Unions' liability respecting Podchernikoff.

[104]*Zoe Chemical*, 406 F.2d at 583; and *H.C. Macaulay Foundry*, 553 F.2d at 1202.

a. *Demand for dues and reinstatement fees from former union members*

On July 9, 1987, the collective-bargainingcontract covering the employees at this facility expired, and a successor contract did not take effect until July 5, 1989. During this 2-year contractual hiatus, a number of employees either resigned their union membership or were informed by their Local Lodge 946 representative that their memberships had lapsed and, hence were canceled because they had failed to pay dues for at least 2 months during the contract hiatus.

On July 14, 1989, after the new collective-bargaining agreement took effect, Local 946 sent a letter to the lapsed former members and two resignees (Kahn Jones and Frances McLain) informing them that the contract contained a union-security clause and that as a condition of continued employment they were required to pay a reinstatement fee by August 7, 1989. In mid-August, Local 946 sent these same employees a copy of the IAM's dues objector policy. In late July or early August, it also sent all unit members a letter explaining their obligations under the union-security clause, including, if applicable, the payment of reinstatement or initiation fees, and notifying them that the IAM had a policy for individuals who object to the expenditure of a portion of their dues on activities not germane to collective bargaining. This letter did not enclose a copy of the policy, but it stated that the policy could be obtained by contacting the union hall. Two employees (Clarence Hull and Barry Shell) paid all or part of the requested $300-reinstatement fee.

By letters dated September 5 and 8, 1989, Local 946 requested Aerojet to discharge certain employees for nonpayment of "lawfully levied" reinstatement fees and/or dues. The employees identified in those letters were the employees whose union memberships lapsed during the contractual hiatus and some employees who had resigned from the Union during that time.

The judge found, and we agree, that Local 946's letter of July 14, 1989, which informed the lapsed former union members and those who resigned their memberships that they had to pay a reinstatement fee as a condition of continued employment, violates Section 8(b)(1)(A) because the time period on which the

fees are based encompassed a period when the employees were not legally required to be union members and pay dues—i.e., during the contract hiatus. See *Auto Workers UAW Local 785 (Dayton Forging)*, 281 NLRB 704, 707 (1986); and *Spector Freight Systems*, 123 NLRB 43, 44-45 (1959), enfd. 273 F.2d 272 (8th Cir.1967). We are not persuaded by Local 946's argument that there is a meaningful distinction between employees who permitted their memberships to lapse during the contract hiatus and those who affirmatively re–**[248]**signed from the Union. The issue is not how the employees ceased to be members of the Union, but rather that they did cease to be members when there was no requirement that they maintain union membership. As the judge correctly held, a union may not impose a reinstatement fee premised on an earlier loss of, or resignation from, union membership when the period during which the alleged obligation accrued was outside the legitimate reach of the applicable union-security clause. Id.[105] Accordingly, we adopt the judge's finding that the July 14 letter requiring, under threat of discharge, payment of a reinstatement fee from employees who resigned their memberships or allowed them to lapse during the contract hiatus violated Section 8(b)(1)(A).

For the same reasons, we agree with the judge that, to the extent Local 946's letters of September 5 and 8 sought the discharge of many of the same former members for failing to pay the reinstatement fee, Local 946 and the IAM violated both Section 8(b)(1)(A) and (2). However, insofar as these two letters sought the discharge of former members based solely on their nonpayment of delinquent dues owed under the new contract's

---

[105]Consistent with these findings, we find merit in the Charging Party's exceptions that the judge erred by failing to order the Unions to refund their reinstatement fees unlawfully accepted from employee Hull and others who may have paid the fee. Accordingly, we shall revise the recommended Order to provide for this remedy. In addition, we adopt the judge's findings that verbal statements made by Local 946 officials to employees Neil Leudtke, Laura Wilson, and Wayne North that they must pay a reinstatement fee in order to become dues objectors constitute unlawful arbitrary conduct, notwithstanding that the Union did not in fact maintain such a policy. Accordingly, we adopt the judge's finding that Local 946's conduct in this regard violated Sec. 8(b)(1)(A).

union-security clause, we agree with the judge, though for reasons different from his, that the complaint as to this conduct must be dismissed. The judge dismissed this aspect of the complaint because it was solely limited to the theory that notice of *Beck* rights must be provided before a discharge is sought for nonpayment of delinquent dues, a theory which the judge rejected earlier in his decision. We have reversed the judge on this issue but we find dismissal of the complaint proper because, as noted above and contrary to the General Counsel, the former members here were informed of their *Beck* rights prior to their attempted September discharges, as evidenced by the IAM *Beck* policy which Local 946 mailed to them in mid-August.[106]

b. *Beck dues objector issues*

The complaint also alleges that the IAM and Local 946 unlawfully delayed recognizing the *Beck* objector requests of several employees, continued to seek full dues from them in the interim, and sought their discharge for nonpayment.

On various dates between July 5 and August 4, 1989, nonmember employees Randall Bakken, Gordon Harris, Clarence Hull, Robert Nelson, Theodore Pecci, and other employees (some unknown) filed dues-objection requests with Local 946 rather than with the IAM as required by the objector policy. On receipt of the objections, Local 946 did not immediately notify the would be objectors that their requests had been misdirected. Rather, as noted above, in late July or early August it distributed to all unit employees, including the *Beck* objectors, a notice referring to existence of the IAM's *Beck* objector policy which could be obtained by contacting the union hall. It was not until mid-August that it sent a copy of the policy to some of the objectors. By letter dated October 6, 1989, the Local threatened to seek the discharge of the objectors for nonpayment of full dues. Finally, on October 20, 1989, the IAM recognized the employees as perfected objectors and reduced their dues as of that date.

---

[106]However, in accord with our discussion in sec. III(B)(2), above, we reverse the judge and find that the Unions violated the Act by failing to provide newly hired employees with notice of their *Beck* rights.

The judge rejected the General Counsel's argument that the employees should have been recognized as objectors when their misdirected objection requests were received by Local 946. Rather the judge found that, on receipt of the misdirected objection, Local 946 was obligated to timely notify the employees that their objections had been misdirected, and specify the correct address to which their objections should be sent. Having failed to act timely in this regard, the judge found that Local 946 violated Section 8(b)(1)(A). We agree and find that it was arbitrary for Local 946 not to act timely. To remedy the violation, the judge found, and we agree, that 2 weeks should be added to the date of the employees' objection requests—1 week for the Local's notification of the error to reach the employee and another week for the request to reach the IAM—and thus that the objectors should have been recognized as perfected 2 weeks after they sought objector status.[107] By thereafter seeking and accepting full dues and rein–**[249]**statement fees from these employees through October 20 and threatening to seek their discharge on October 6, 1989, for nonpayment, we further adopt the judge's finding that the Unions violated Section 8(b)(1)(A).[108]

---

[107]We find no merit in Local 946's argument that its only obligation during the first 30 days of a collective-bargaining agreement after a contract hiatus is to refrain from enforcing the union-security clause. This argument ignores the Local's paramount obligation, whether there exists a union-security clause or not, to represent all unit employees fairly. Fairness plainly dictates that a union notify employees who have made clear their desires to become dues objectors of the proper manner for effectuating those desires. Failure to so notify such employees constitutes arbitrary action.

We also reject as disingenuous Local 946's suggestion that, because certain employees sought "financial core" status only, but did not specifically invoke their *Beck* rights, it was not obligated to reduce those employees' dues. As we have found, the Union must inform employees of their initial *Beck* rights and the procedures for perfecting those rights. The Union failed to do so here and cannot legitimately impute to the employees knowledge of the technicalities of the procedure in the absence of such notice.

[108]We also adopt the judge's finding that the Unions violated Sec. 8(b)(1)(A) by charging employees for legislative expenses after their status as *Beck* objectors was perfected. In accord with our earlier holding, however,

Our holding does not require, however, that the Union abandon all procedures for the orderly administration of its dues-objection program. Once a would be objector is notified in a timely manner that his objection has been misdirected and informed of the proper procedure to perfect his objection, the employee thereafter bears the responsibility to follow the proper procedure. Thus, although we agree with the judge that Local 946's distribution of the notice merely referring to the existence of its *Beck* objection policy does not constitute adequate notice, even if timely received, that objections should be sent to the IAM, we find that mailing of the policy does constitute adequate notice. Accordingly, we find no violation with respect to the Unions' failure to recognize the objector status of employees such as Charles Lewis who had timely received a copy of the IAM's *Beck* policy but did not take steps to follow the procedures.

5. McDonnell Douglas

The issues in this case are whether the IAM, District Lodge 720, and Local Lodge 2024 violated their duty of fair representation by failing to account for their chargeable and nonchargeable expenditures on a unit-by-unit basis and by charging objectors for legislative expenses and nonunit litigation expenses. Consistent with our earlier findings, we find a violation only with respect to the Unions' charging for legislative expenses.[109] In all other respects, we dismiss the complaint allegations involving this facility.

6. Lockheed Service

---

we reverse the judge and find that the Unions did not violate the Act by charging the employees for nonunit litigation expenses. For the reasons set forth in fn. 78 supra, Member Cohen would find a violation.

[109]As discussed supra at fn. 78, Member Cohen concludes that out-of-unit litigation expenses are not legally chargeable. Accordingly, he would find a violation here.

On May 21, 1990, five unit employees [110] at Lockheed Service informed Local Lodge 821 that they were resigning their union memberships and requested *Beck* objector status. Local 821, 3 days later, notified each employee by letter that his or her dues-objector application should have been sent to the IAM rather than to the Local and the application was therefore rejected. In each instance, Local 821 directed the employee to follow the procedures set forth in the IAM's dues-objector policy and enclosed a copy of the policy. Based on our finding above as to a union's obligation concerning misdirected dues-objector applications, we find, in agreement with the judge, that by promptly notifying the employees of their error and by enclosing a copy of the policy with instructions to follow the procedures contained therein, Local Lodge 821 satisfied its duty of fair representation.[111]

7. Lockheed Missiles

---

[110]Grebell Aila, Janice Bern, Linda Capurro, Norman Rydwell, and Jerry Trunnell.

[111]We agree with the judge, however, that by enclosing the policy with its reference to the January window period for filing a *Beck* objection, the IAM and Local 821 violated Sec. 8(b)(1)(A) by misleading newly resigned members to believe that the window period applied to them. In accordance with our holding above, we further adopt the judge's finding that the Respondent IAM, District 120, and Local 821 violated Sec. 8(b)(1)(A) by charging objectors for legislative expenses, but we reverse his finding of a violation with respect to the Unions' charging for nonunit litigation expenses. Consistent with his view set forth in fn. 78, supra, Member Cohen would find a violation in this regard.

In light of record evidence that resigned union members who filed *Beck* objections all were sent the December issue of the Machinist, we adopt the judge's finding that the Unions did not violate the Act by failing to provide them with notice of their *Beck* rights after they resigned or by failing to account for expenditures on a unit basis. For the reasons set forth in fn. 41, Member Cohen would find a violation. Finally, in the absence of exceptions, we adopt pro forma the judge's finding that the General Counsel failed to carry his burden of proving that the IAM, District 120, and Local 821 continued to accept full dues which were deducted from employee Constance Downs after she registered a *Beck* objection.

The two issues in this case both have been resolved above. The first issue is whether the IAM, District Lodge 508 and Local Lodge 2230 lawfully rejected dues-objection requests from nine employees because they were submitted together rather than in individual envelopes as required under the IAM policy. In view of our finding above that the separate envelope requirement is an impermissible impediment to the employees' exercise of their *Beck* rights, we agree with the judge's finding that the application of that requirement so as to reject otherwise conforming objector applications violates the Unions' duty of fair representation. The second issue is whether the IAM, District Lodge 508, and Local Lodge 2227 breached their duty of fair representation by failing to account for representational expenditures on a unit-by-unit basis and by charging objectors for litigation and legislative expenses. For the reasons stated above, we find a violation only with respect to the Unions' charging for legislative expenses and dismiss the remaining allegation of the complaint. [112]

8. General Dynamics, Ft. Worth Division

This case presents the issue of whether and to what extent the IAM is liable for the failure of a district or **[250]**local affiliate to promptly notify an employee that his objection request has been misdirected. Employee Kenneth Lee Stephens was a member of the bargaining unit at this facility, but had never joined the Union. He had, however, received the December 1990 issue of the Machinist. On January 8, 1991, Stephens sent a letter to the president of District Lodge 776 requesting dues-objector status.[113] The District Lodge sent its business representative to meet with Stephens on February 8 and again on February 27, 1991, in an unsuccessful effort to persuade him to join the Union. Thereafter, by letter dated March 7, 1991,

---

[112]Consistent with his view set forth in fn. 78, supra, Member Cohen would find a violation with regard to nonunit litigation expenses.

[113]Both District Lodge 776 and the International are parties to the collective-bargaining agreement at this facility.

District Lodge 776 President Lane informed Stephens that his letter was "ineffective" and that his request "would have to be made to the IAM in Washington, D.C." On May 24, 1991, Stephens sent a letter to the IAM requesting dues-objector status, but the IAM rejected Stephens' dues-objector request as untimely in that it was filed outside the January window period.

The judge noted that the complaint alleged violations against only the IAM, and not the District or Local Lodge. He rejected the General Counsel's argument that the IAM should be held accountable for the District's failure to notify Stephens promptly that his objection had been misdirected and dismissed the allegation against the IAM. We agree.

We have found above, that a district or local lodge that receives a misdirected dues-objection request must, in order to satisfy its duty of fair representation under *Beck*, timely inform the would be objector of the error and of the proper procedures for securing the desired objector status. Had the complaint charged the District with breach of its duty to so notify Stephens, we would doubtlessly find the violation. Here, however, the complaint alleges only unlawful action on the part of the IAM for adhering to its window period, and the judge declined to impute the actions of the District Lodge representatives of the IAM.

Based on the record evidence before us, we cannot find that the General Counsel has established that District Lodge President Lane was acting as an agent for the IAM when he failed to timely inform Charging Party Stephens that his objection had been misdirected, and failed to timely inform him of the proper procedures for filing an objection. We accordingly cannot find that the IAM is responsible for the conduct of District Lodge President Lane.

"Congress has made clear that international unions are not to be held liable for the acts of their locals purely on the basis of the relationship between them." *Musicians Local 47* (*American Broadcasting*), 255 NLRB 386, 391 (1981); *Mine Workers* (*Garland Coal*), 258 NLRB 56, 59 (1981) ("Respondent Local and Respondent District are legal entities apart from Respondent International and [the] Respondent International is not automatically responsible for the acts of its affiliates"), affd. 727 F.2d 954 (10th Cir.1984); and *Electrical Workers IBEW Local 5*

(*Franklin Electric*), 121 NLRB 143, 146-148 (1958). See *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 216-218 (1979); and *Coronado Co. v. Mine Workers*, 268 U.S. 295, 299 (1925). Rather, the Act was specifically amended in 1947 "to make both unions and employers subject to the ordinary common law rules of agency." 2 Hardin, *The Developing Labor Law*, 1600 (3d ed. 1992) (quoting H.R.Rep. No. 510, 80th Cong., 1st Sess. 36 (1947)). The Board accordingly has a "clear statutory mandate to apply the 'ordinary law of agency'" to its proceedings. *Sunset Line & Twine Co.*, 79 NLRB 1487, 1507 (1948).

In asserting that District Lodge President Lane was acting as an agent for the IAM, the General Counsel thus may not establish an agency relationship based on the mere fact of affiliation between the union entities. Rather, the General Counsel must establish under relevant theories of agency that the District Lodge here was acting as the agent of the IAM. The General Counsel has failed to satisfy this burden.

The General Counsel here does not point to any evidence, and our review of the record reveals none, that the IAM actually authorized District Lodge President Lane as its agent, or any other District or Local officials, to direct employee *Beck* objections to the International or otherwise accept employee objections. Rather, the IAM has made clear in its *Beck* policy, which was distributed to Charging Party Stephens, that administration of the policy rests with the IAM, and that objections must be directed to the IAM itself. We accordingly find no evidence that the IAM actually authorized any District official to act as its agent in this regard.[114]

We cannot find, moreover, that the General Counsel has established that the District was the agent of the IAM under the theory of apparent authority.

> Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable

---

[114]Compare, e.g., *Sheet Metal Workers Local 91 (Schebler Co.)*, 294 NLRB 766, 776 fn. 11 (1989) (International union responsible for acts of local union where latter acted pursuant to the direction of the International and the International itself participated in the unlawful activity).

> basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question. *NLRB v. Donkin's Inn*, 532 F.2d 138, 141 (9th Cir.1976); *Alliance Rubber Co.*, 286 NLRB 645, 646 fn. 4 (1987). Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such belief. Re-**[251]**statement 2d, Agency § 27 (1958, Comment). Two conditions, therefore must be satisfied before apparent authority is deemed created: (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompassed the contemplated activity. Id. at § 8.

Service Employees Local 87 (*West Bay Maintenance*), 291 NLRB 82, 82-83 (1988). There is no evidence here that the IAM made any manifestation to Stephens to cause him to believe that District Lodge President Lane was authorized to act for the IAM with respect to receipt of *Beck* objections. Rather, there is contrary evidence that the IAM informed Stephens through the Machinist publication that such receipt was solely the responsibility of the IAM, which is an entity separate from the District. The General Counsel has not pointed us to any evidence establishing a manifestation by the IAM to Stephens that supplied him with a reasonable basis to believe that the IAM authorized District officials to act on its behalf with respect to *Beck* objections. Assuming arguendo that Stephens may have reasonably believed that District officials were authorized to act on behalf of the IAM, the IAM took steps to specifically disabuse him of that notion by publication of its *Beck* policy.

The sole evidence brought to our attention by the General Counsel in support of his assertion of agency is that the IAM is, along with District Lodge 776, the bargaining representative of the unit employees at General Dynamics, Fort Worth Division. Liability of an International for the actions of an affiliate has been found in circumstances of joint bargaining status, where the constitution of the International gives it broad authority over the affiliate union in such circumstances and the International is itself implicated in the conduct of the affiliate union. See *Boilermakers*

Local 40 (*Riley-Stoker Construction*), 197 NLRB 738, 742-743 (1972); and *Combustion Engineering*, 272 NLRB 957, 968-969 (1984). We find no such evidence in the record before us, however, and the General Counsel has not pointed us to any such evidence other than the sole fact that both the IAM and District Lodge are signatory to the collective-bargaining agreement.

In addition, significantly, the violation alleged here does not directly relate to the administration of the collective-bargaining agreement by either the District or the International; rather, it relates to the administration of the International's policy regarding objecting dues payers. The status of the International as the joint collective-bargaining representative along with the District provides objectors such as Stephens no reasonable basis for concluding that the District is acting on behalf of the International with regard to acceptance of dues objections under this policy.

We accordingly conclude that the General Counsel has not established that District Lodge 776 was acting as the agent of the IAM with respect to Stephens' objection.[115] The issue is thus whether the IAM violated its duty of fair representation toward Stephens when, on the facts made known to it, it refused his request as untimely. We hold that it did not.

When Stephens wrote to the IAM in May 1991 requesting dues-objector status, he did not inform the IAM of his earlier efforts to submit a timely application. The IAM therefore had no reason to know that the District or Local representatives may have acted improperly in response to his misdirected request. Under these circumstances, the IAM did not breach its duty of fair representation toward Stephens.[116]

---

[115]We agree with the judge that it is unnecessary to determine whether Business Representative Huddleston was acting as an agent of the IAM when he met with Stephens in February 1991. As the judge correctly observed, Huddleston did not contact Stephens until after the expiration of the January window period and after the corresponding failure of District Lodge President Lane to timely notify Stephens of the misdirection. Accordingly, Huddleston was not involved in the District's alleged misdirection conduct, and did not make contact with Stephens until after the window period had expired.

[116]As discussed in fn. 41, Member Cohen concludes that the Machinist did not adequately inform employees of *Beck* rights and procedures. Accordingly,

9. Boeing

a. *Factual findings*

During a strike in October through November 1989, approximately 2700 employees in this multifacility unit resigned their union memberships and crossed the picket lines. The Employer, the IAM, and District Lodge 751 entered into a new collective-bargaining agreement on November 22, 1989, that contained a union- security clause. During the first 30 days of the new contract, about 400 employees sent a letter to the District Lodge seeking dues-objector status. The District promptly informed them that the request had been misdirected and instructed them to follow the policy set forth in the December issue of the Machinist, but it did not enclose a copy of the policy with its letter to them.

In January 1990, about 120 employees perfected their dues-objector status with the IAM. Also during January, the District sent Boeing letters requesting the discharge of approximately 2000 employees pursuant to the union- security clause for failure to pay dues after the strike. Boeing sent each employee a letter advising him or her to make either dues or agency fee payments to the Union or face discharge. The employees complied and none was discharged.

[252]b. *Analysis of Beck issues*

The complaint alleges that the Unions' failure to inform the roughly 2700 employees of their *Beck* rights upon their resignation from the Union during the strike violated the Act. There is no dispute that the only notice of *Beck* rights employees receive is the notice of the IAM's dues-objector policy contained in the December Machinist. Several employees testified that they did not receive the December 1989 Machinist, that they stopped

---

without reaching issues of agency, he would find that the International did not apprise employees that objections must be sent to it. Thus, the International is responsible for the misdirected objection, and breached its duty of fair representation.

receiving the publication when they resigned, or that they had received it only sporadically. Union officials, however, testified that the publication was mailed to the last known address of all unit employees, whether on strike or not and whether they resigned from the Union or not. Other union officials testified that the *District Lodge* to which the employees belonged sent its publication only to union members and stopped mailing the publication to employees who resigned during the strike. The District publication does not contain the IAM's *Beck* policy.

The judge did not resolve the factual discrepancies concerning whether the Unions mailed the December 1989 Machinist to the employees who resigned during the strike because he found that the Unions were not obligated to give nonmember employees initial notice of their *Beck* rights. We have reversed the judge on this issue and held above that the Unions are obligated under their duty of fair representation to provide notice of *Beck* rights to all nonmember employees before seeking to hold them to their dues paying obligations under a union-security agreement. We also have held that a union need not make extraordinary efforts to disseminate its policy, and that the published notification in the Machinist suffices to meet the obligation. These findings, however, do not resolve the issue in this case, because the record does not indicate, and the judge did not find, whether the December 1988 or December 1989 issue of the Machinist was sent to the 2700 employees who resigned from the Union during the strike.

Because our determination of whether the Unions breached their duty of fair representation to these employees turns on whether they had been sent notice of the IAM *Beck* policy, either the December 1988 issue or the 1989 issue of the Machinist, we sever this case and remand to the judge this critical factual issue regarding notice and direct him to render a decision based on his findings. We do not intend, however, to require the General Counsel to present testimony from all 2700 employees as to whether they received the Machinist or read the policy. Rather, we instruct the judge to determine, based on credible evidence, whether the Unions' procedures for disseminating the IAM

publication at this facility constituted reasonable steps to send the publication to all unit employees.[117]

The complaint also alleges that the Unions violated Section 8(b)(1)(A) by refusing immediately to recognize as *Beck* objectors the 400 employees who misdirected their *Beck* objection requests to the District Lodge.[118] We agree with the judge that the objection requests from the 400 employees were invalid because they had been sent to the District Lodge rather than to the IAM. Thus, as we have found above, the IAM was not obligated to recognize them as perfected objectors upon receipt of the objections at the District Lodge. We do not agree, however, that the District Lodge's responsive letters to the employees, referring the employees to the policy in the Machinist, without more, satisfied the District Lodge's duty of fair representation as to the employees who attempted to become objectors.

We have found that a district or local lodge that receives a misdirected dues-objection request must timely notify the would be objector of the error and give him or her the correct information about where to send their objection. We are not persuaded that the response letters referring to the December issue of the Machinist was sufficient to satisfy that obligation, notwithstanding that the letters were sent within 1 month after the magazine's issuance. The duty of fair representation does not permit a union to set up a scavenger hunt for employees who make it known that they wish to become dues objectors to obtain the procedures. Therefore, we reverse the judge and find that the District's response to the roughly 400 employees who attempted to become *Beck* objectors was arbitrary and violated Section 8(b)(1)(A).[119]

---

[117]Consistent with his view set forth in fn. 41, supra, Member Cohen does not accept his colleagues' premise that the published notification in the Machinist is sufficient to meet the Unions' obligation to give employees initial *Beck* notice, and therefore would find a violation without the necessity of a remand.

[118]As noted above, the District Lodge sent each employee a letter directing them to follow the procedure set forth in the December Machinist.

[119]Consistent with our decision above, we reverse the judge and find that the Unions violated the Act by not providing initial notice of *Beck* rights to

c. *Request for refund of reinstatement fee*

The complaint also alleges that employee Gary Davis was refused a refund of his reinstatement fee after he informed the District that he had paid it in error. Although Davis resigned his membership during the strike, his supervisor told him after the strike had concluded to go to the union hall and rejoin the Union. At the union hall, Davis asked the receptionist "how much it was going to cost to rejoin so he satisfied the **[253]**requirement to work at Boeing." The receptionist reportedly told him it would cost $90, which he paid. Later, when he learned he could become a dues objector, he asked for a refund of his reinstatement fee, but his request was denied.

For the reasons stated by the judge, we find that the District played no part in Davis' decision to rejoin the Union and therefore was under no obligation to refund the fee he paid in error. The District did not misinform him as to his obligations, but merely responded truthfully to his inquiry. As the District points out in its brief, it is not obligated to attempt to dissuade employees who voluntarily seek to join the Union.

10. General Dynamics, Convair Division, and Electronic Division

This case involves questions regarding application of the January window period for filing dues objections, failing to account for collective-bargainingexpenses based on the objecting employees' bargaining unit, and charging objectors for legislative and nonunit litigation expenses. Consistent with our findings above, we adopt the judge's findings that the IAM, District Lodge

---

resigned members who did not receive the December 1988 or 1989 issue of the Machinist. Further, we adopt the judge's finding that by failing to inform each employee of the specific dues arrearage before seeking discharge and by precipitously seeking their discharge, the Distr ict violated Sec. 8(b)(1)(A) and (2). See *NLRB v. Hotel & Restaurant Employ ees Local 568* (*Philadelphia Sher aton*), 320 F.2d 254, 258 (3d Cir.1963), enfg. 136 NLRB 888 (1962).

50, and Local Lodge 1125 violated Section 8(b)(1)(A) by applying the January window period to reject the dues objection applications of employees Beldon Lyons and William Koehly. By thereafter refusing to reduce their dues obligations in accordance with their *Beck* objection applications and by charging Lyons for legislative expenses for 1991, we find in agreement with the judge that the Unions further violated Section 8(b)(1)(A). In accord with our holding above, however, we find that the Unions did not breach their duty of fair representation by failing to account for their expenditures, including legislative and litigation expenses, on a unit-by-unit basis.[120]

11. GE Medical

In 1985, employees Michael Meunier, Alan Strang, Thomas Gratz, Richard Martin, and Richard Dietrich each submitted a letter to the IAM, District Lodge 78, and Local Lodge 1916 objecting to the expenditure of their agency fees for nonrepresentational activities. In response, the Unions informed them that, because the issue of whether and to what extent agency fees were "rebatable" was being actively litigated in the courts, a portion of their fees would be escrowed in an interest bearing account, beginning with their September 1985 dues payment, until the courts resolved the issue.

In September 1988,[121] the IAM sent each employee a letter with a copy of its dues-objection policy offering the employee an "opportunity to perfect an objection and to receive the appropriate rebates and advance reductions." The IAM also informed the employees of the current year's calculation of chargeable expenditures and provided supporting documentation in the form of audits to support the calculation. Finally, the IAM invited each employee to participate in the upcoming arbitration of challenges to the expenditures.

---

[120]Consistent with his view set forth in fn. 78, supra, Member Cohen would find a violation with regard to the failure to account for litigation expenses on a unit-by-unit basis.

[121]*Beck* was decided in June 1988.

By letter dated October 5, 1988, counsel for the employees declined the IAM's offer to follow the procedures outlined in its *Beck* policy. Counsel for the employees explained that he believed the IAM's policy to be flawed and inadequate and vowed to pursue the employees' unfair labor practice charges on the matter.

The Union did not refund the excess payments for Gratz, Meunier, Martin, and Strang until October 1989, and it waited until September 1991 to refund Dietrich's excess payments.

As noted by the judge, the IAM's September 1988 letter to the employees states that it had a dues-reduction policy in place, including that year's calculation of chargeable expenditures. The Union contends that it was acting in good faith when it waited for more than a year (or 3 years in Dietrich's case) to refund the objectors' dues payments, because it took that long to set up its audit procedures. We find insufficient record evidence to support that contention. Therefore, we agree with the judge that the Unions' refund delay constituted arbitrary conduct in violation of Section 8(b)(1)(A).[122]

12. Trane

The issues in this case are whether the IAM and District Lodge 66 violated the Act by charging Robin Hanson for nonunit litigation and legislative expenses after he filed a *Beck* objection and by failing to account for expenditures on a unit-by-unit basis. Consistent with our findings above, we find that the Unions violated Section 8(b)(1)(A) by charging Hanson for legislative expenses, but did not violate the Act by charging him for nonunit

---

[122]We further find in agreement with the judge that the Unions violated Sec. 8(b)(1)(A) by charging the objectors for legislative expenses.

Consistent with our holding above, however, we find that the Unions did not breach their duty of fair representation under *Beck* by failing to account for expenditures on a unit-by-unit basis, or by charging the objectors for nonunit litigation expenses. Consistent with his view set forth in fn. 78, supra, Member Cohen would find a violation in the latter regard.

litigation expenses or by failing to account for expenses on a unit-by-unit basis.[123]

AMENDED REMEDY

Having found that Respondent Unions violated Section 8(b)(1)(A) of the Act by failing to notify employ–**[254]**ees of their *Beck* rights before seeking dues from them under the union-security clause, we order them to provide such notice to all nonmember employees as they enter the unit, at the time the Union first seeks to obligate such employees to pay dues under the union-security clause. We further order them to provide such notice to all current nonmember employees, including those who were hired since the last dissemination of the notice published in the December 1994 Machinist, by publishing in one issue of the Machinist the national notice set forth in Appendix VII-1 of this Decision, along with the Unions' *Beck* policy as amended consistent with this decision. This publication is required to be done as soon as practicable after the issuance of this decision.

We agree with the judge that the refund of legislative expenses is properly extended to all Charging Parties as well as other similarly situated employees who filed a *Beck* objection in the relevant years at issue in this proceeding.[124] It is well-estab-

---

[123]Consistent with his view set forth in fn. 78, supra, Member Cohen would find a violation with regard to nonunit litigation expenses.

[124]Member Browning agrees that the calculation of the amount of legislative expenses improperly collected from perfected dues objectors since December 1988 is properly left to the compliance stage of these proceedings. She does not agree with her colleagues, however, that these sums must be refunded irrespective of their final amount. It is the primary responsibility of the Board to devise remedies that effectuate the policies of the Act, and the Board is vested with broad discretion to fashion remedies that will effectuate national labor policy. *NLRB v. Meat Cutters Local 1347*, 417 U.S. 1, 8 (1974); *Sure-Tan Inc. v. NLRB*, 467 U.S. 883, 898 (1984); and *Fibreboard Paper Products Corp. v. NLRB* 379 U.S. 203, 215-216 (1964). Whether a de minimis refund for improperly charged legislative expenses will effectuate national labor policy falls squarely within the Board's broad discretion to devise remedies. Member Browning would leave this determination to the compliance stage of these proceedings, in which the normal degree of

lished Board policy that when the General Counsel has proven unlawful conduct against a defined and easily identifiable class of employees—here, dues objectors—the Board, with court approval, has found it appropriate to extend remedial relief to all members of that class, including individuals not named in the complaint. See, e.g., *Iron Workers Local 433 (Reynolds Electrical)*, 298 NLRB 35, 36 (1990). We accordingly find without merit the IAM's exception that any refund must be limited to named individuals in the complaint or the Charging Parties.[125]

In addition, having found that Local Lodge 946 unlawfully required, under threat of discharge, payment of a reinstatement fee by employees at Aerojet who resigned their memberships or allowed them to lapse during the contract hiatus, we order the refund of any such reinstatement fees, with interest.

AMENDED CONCLUSIONS OF LAW

1. Add the following to Conclusion of Law 1.
"General Dynamics, Ft. Worth Division
"General Dynamics, Convair and Electronics Division"
2. Substitute the following for Conclusion of Law 3.
"3. Respondent International:

"(a) Has violated Section 8(b)(1)(A) of the Act by engaging in the conduct found violative, supra, as alleged in complaint paragraphs: D,7(b) concerning nonmember employees as they enter the unit; D,7(c) concerning the provisions of rights to object to resigned union members only; D,8(a) and (b), D,9(a) until 1990; D,9(c) as to initiation fees, D,10 as to legislative expenses only; E,4(a-d) and E,6(d) as to legislative expenses only; E(7); F,5 as to legislative expenses only; H,4(a) and H,5 as to employees who had not paid a reinstatement fee; H,6(a) and (b), H,8(b),

---

discretion would be reposed in the Board's compliance officers. Compare *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 305 and fn. 15 (1986) (First Amendment concerns require in public sector labor law the refund of improperly charged expenses whatever the amount.)

[125]Because a majority of the Board reversed the judge and dismissed the allegation with respect to nonunit litigation expenses, the majority also reverses the judge's grant of a remedy as to that violation.

and H,10(a-c) as to legislative expenses only; H,11(a-b); H,12(a-c) as to employees who were not sent a copy of the December 1988 Machinist; I,6 as to legislative expenses only; J,7 as to legislative expenses only; J,12 as to legislative expenses only; K,4(b), K,5, and K,7 as to legislative expenses only; P,4; Q,4(b); Q,4(c) as to legislative expenses only; R,4(b) as to legislative expenses only.

"(b) Has violated Section 8(b)(2) of the Act by engaging in the conduct found violative, supra, as alleged in complaint paragraph H,6(a) respecting employees who were denoted as having failed to pay their reinstatement fees.

"(c) Has not otherwise violated the Act as alleged."

3. Substitute the following for Conclusion of Law 4.

"4. Respondent Local 354 has violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs: E,4(a-d), E,6(a-d) as to legislative expenses only; and E,7. Respondent Local 354 has not violated the Act other than as specifically found above."

4. Delete the words "extra-unit and" from Conclusion of Law 5.

5. Delete Conclusion of Law 6 in its entirety.

6. Substitute the following for Conclusion of Law 7.

"7. (a) Respondent Local 946 has violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs: H,4(a), H,5 as to employees who had not paid their reinstatement fees; H,6(a-b), H,8(b), and H,10(a-c) as to legislative expenses only; H,11(a-b) and H,12 as to employees who were not sent a copy of the December 1988 Machinist.

"(b) Respondent Local 946 has violated Section 8(b)(2) of the Act as alleged in paragraph H,6(a) respecting employees who were denoted as having failed to pay their reinstatement fees.

[255]"(c) Respondent Local 946 has not violated the Act other than specifically found above."

7. Substitute the following for Conclusion of Law 8.

"8. Respondent District Lodge 720 and Respondent Local Lodge 2024 violated Section 8(b)(1)(A) of the Act by engaging in the conduct described in complaint paragraph I,6 as to legislative expenses only. Respondent District Lodge 720 and Respondent Local Lodge 2024 have not otherwise violated the Act."

8. Substitute the following for Conclusion of Law 9.

"9. Respondent District Lodge 120 and Respondent Local Lodge 821 violated Section 8(b)(1)(A) of the Act by engaging in the conduct set forth in complaint paragraphs J,7 and J,12 as to legislative expenses only. Respondent Local 821, but not District Lodge 120, violated Section 8(b)(1)(A) by engaging in the conduct set forth in complaint paragraphs J,9(a-c) and J,13. Respondent District Lodge 120 and Respondent Local Lodge 821 have not otherwise violated the Act."

9. Substitute the following for Conclusion of Law 10.

"10. Respondent District Lodge 508 and Respondent Local Lodges 2227 and 2230 violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs K,4(b), K,5, and K,7 to the extent of legislative expenses only. Respondent District Lodge 508 and Respondent Local Lodges 2227 and 2230 have not otherwise violated the Act.

" Respondent District Lodge 751 violated Section 8(b)(1)(A) and (2) of the Act as alleged in complaint paragraph M,4 with respect to resigned members who did not receive the December 1988 or 1989 issues of the Machinist, and complaint paragraphs M,8, M,9, M,10(b), and 11(a). Respondent District Lodge 751 has not otherwise violated the Act."

11. Substitute the following for Conclusion of Law 13.

"13. Respondent Local Lodge 1916 and Respondent Local Lodge 78 have violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs Q,4(b-c) to the extent of legislative expenses only. Respondent Local Lodge 1916 and Respondent Local Lodge 78 have not otherwise violated the Act."

12. Substitute the following for Conclusion of Law 14.

"14. Respondent District Lodge 66 and Respondent Local Lodge 21 have violated Section 8(b)(1)(A) of the Act as alleged in paragraph R,4(b) of the complaint to the extent of legislative expenses only. They have not otherwise violated the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the following Respondent Unions, their officers, agents, and representatives, cease and desist from the actions

noted below and take the affirmative actions set forth in full below following their names.

I. The International Association of Machinists and Aerospace Workers, AFL–CIO

A. With respect to the "national violations" found under section D of the complaint shall

1. Cease and desist from

(a) Applying its "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy) to prevent employees who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process for a reasonable period after their union resignations.

(b) Applying its Policy to reject objector applications:

(i) Sent by other than certified mail.

(ii) Sent in other than individual envelopes.

(c) Failing to apply its Policy to initiation fees submitted by unit members of represented units whose contracts contain union-security clauses.

(d) Misleading potential objecting unit members by maintaining and publicizing its Policy with the provisions found improper in the decision of the Board underlying this notice.

(e) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenditures.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonemployees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Amend its Policy as follows:

(i) To clearly state that it applies to all fees of any kind which must be paid by unit employees under any union-security clause including periodic dues and initiation fees.

(ii) To delete the following two restrictions on the submission of dues objector applications:

(a) The requirement that applications be sent by certified mail.

(b) The requirement that applications be sent in individual envelopes.

(iii) To assert that unit members who have resigned from the Union may file objections at any time, or, at the option of the Union, for a reasonable period spe–**[256]**cifically designated in the Policy and not to be less than 30 days, after the resignation is submitted.

(c) Ceasing publication of its unamended Policy which does not correctly inform and therefore may mislead nonmember employees respecting their rights to file objections to nonrepresentational fee collections.

(d) Accept all objections previously rejected, retroactively to the date of their submission, which would have been appropriate and therefore accepted, but for the application of the provisions of the Policy, noted above, which are being deleted or amended.

(e) Refund, with interest, all fees collected for nonrepresentational expenditures from employees above for the periods they were or should have been perfected objectors.

(f) Refund, with interest, all fees collected from objectors attributable to nonchargeable legislative expenses.

(g) Post at its Washington, D.C., offices copies of the attached national notice marked "Appendix VII-1" and all local notices marked as "Appendices VII- 2 through 12."[126] Copies of the notice, on forms provided by the Regional Director for Region 34, in English and such other languages as the Regional Director determines are necessary to fully communicate with union members and represented employees, after being signed by

---

[126]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent International's authorized representative, shall be posted by Respondent International immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members and other members of represented bargaining units are customarily posted. The notice shall be modified for certain postings as set forth in the remedy section of this decision. A copy of the amended Policy shall be posted with the national notice. Reasonable steps shall be taken by Respondent International to ensure that the notices and amended Policy are not altered, defaced, or covered by any other material.

(h) Post at the offices of Respondent District and Local Lodges named herein copies of the attached national notice marked "Appendix VII-1."[127] Copies of the notice, on forms provided by the Regional Director for Region 34, in English and such other languages as the Regional Director determines are necessary to fully communicate with union members, after being signed by Respondent International's authorized representative, shall be posted by Respondent International immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members and other members of represented bargaining units are customarily posted. The notice shall be modified for certain postings as set forth in the remedy section of this decision. A copy of the amended Policy shall be posted with the national notice. Further, a copy of the appropriate local notice shall be posted in conjunction with the national notice and amended Policy. Reasonable steps shall be taken by Respondent International to ensure that the notices and amended Policy are not altered, defaced, or covered by any other material.

(i) Publish the national notice, amended as set forth in the portion of this decision entitled remedy, and the amended Policy in one issue of the monthly magazine the Machinist as set forth in the remedy section of this decision.

(j) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and

---

[127]See fn. 126, supra.

reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent International has taken to comply.

B. With respect to the "local violations" found under sections E through R of the complaint.

Undertake each and every action and cessation of action directed to the other constituent bodies within Respondent International, i.e., Respondent District Lodges and Local Lodges, appearing below, which provisions and directions are specifically incorporated by reference herein in order to avoid needless duplication as set forth in the remedy section of this decision.

IT IS FURTHER ORDERED that Cases 34-CB-1440-(4-10) are severed from the above- captioned proceeding and are remanded to Administrative Law Judge Clifford Anderson for the limited purpose of determining whether Respondent IAM mailed its December 1989 Machinist publication to the employees who resigned from the Union during the strike.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision setting forth the above determinations in Cases 34-CB-1440-(4-10) including resolutions, findings of fact, conclusions of law, and a recommended Order consistent with this decision. Copies of such supplemental decision shall be served on all the parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

II. District Lodge 50 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Applying its Policy to prevent employees in collective-bargaining units represented by the Union who have resigned from the Union from filing objections to **[257]**the payment of fees for expenditures of the Union not germane to the collective-bargaining process.

(b) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Recognize employees Beldon Lyons and William Koehly as objecting nonmembers for calendar years 1990 and 1991, respectively.

(c) Refund with interest all fees collected for non-representational expenditures from employees Lyons and Koehly for the periods they were or should have been perfected objectors.

(d) Amend its Policy to make it clear that employees who resign from the Union may file objections to the collection of fees for nonrepresentational expenses for a reasonable time after their resignation.

(e) Refund with interest all fees collected from objector Lyons in calendar year 1991 for nonchargeable legislative expenses as set forth in the remedy section of this decision.

(f) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the General Dynamics' unit notice marked as "Appendix VII-10."[128] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions' immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. The amended Policy shall be posted with the notices. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Sign and return sufficient copies of the national notice, General Dynamics unit notice, and amended Policy for posting by

---

[128]See fn. 126, supra.

General Dynamics, if willing, at all locations where notices to General Dynamics' unit employees are customarily posted.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Unions have taken to comply.

III. District Lodge 66 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected from objector Robin Hanson in calendar year 1990 which are attributable to nonchargeable legislative expenses as set forth in the remedy section of this decision.

(c) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the Trane's unit notice marked as "Appendix VII-12."[129] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Union's authorized representative, shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places

---

[129]See fn. 126, supra.

including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return sufficient copies of the national notice, Trane's unit notice, and amended Policy for posting by Trane, if willing, at all locations where notices to Trane's unit employees are customarily posted.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

[258]IV. (Allegations against District Lodge 115 were withdrawn prior to this decision. See footnote 97, supra. Consequently, the Order that appears in the judge's decision has been deleted from the Board's Order.)

V. District Lodge 120 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(b) Misleading unit members who have recently resigned from the Union that they are not entitled as a matter of right to file dues objections after their resignations irrespective of its Policy limiting such objections to the month of January.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended

pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected from unit employee nonrepresentational fee objectors Constance Downs, Norman Rydwell, Grebell Aila, Linda Capurro, Jerry Trunnell, Janice Bern, and others for legislative expenses as set forth in the remedy section of this decision.

(c) Consider unit employees Downs, Rydwell, Aila, Capurro, Trunnell, Bern, and Don Church to have become objectors on a date 1 week after it misled them into believing they were not eligible to file objections and refund to each employee, with interest, all dues and fees collected thereafter when the employees would have been objectors but for its conduct which are in excess of those properly collected from objecting unit members.

(d) Post at its union hall offices copies of the attached national notice marked "Appendix VII- 1," the Lockheed Service's unit notice marked as "Appendix VII-7,"[130] and the amended Policy. Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return sufficient copies of the national notice, Lockheed Service's unit notice, and amended Policy for posting by Lockheed Service, if willing, at all locations where notices to Lockheed Service's unit employees are customarily posted.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

---

[130]See fn. 126, supra.

VI. District Lodge 508 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Failing and refusing to accept otherwise proper objections to the payment of fees for nonrepresentational expenses from nonmember unit employees because they were not submitted in individual envelopes.

(b) Accepting full dues and fees from unit employees whose objections were improperly rejected.

(c) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to its nonchargeable legislative expenses.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Accept as objectors unit employees Elizabeth Morehouse, Ronaele Findley, Melville Arnot, James Humphreys, Leonard Kuhnleim, Denis McMahon, Donna Mendoza, Randall Sparks, and James Sumter effective January 1990.

(c) Refund with interest to employees Morehouse, Findley, Arnot, Humphreys, Kuhnleim, McMahon, Mendoza, Sparks, and Sumter all dues and fees collected in calendar year 1990 in excess of the amount properly collected from perfected dues objectors as set forth in the remedy section of this decision.

(d) Refund with interest all fees collected from unit employee nonrepresentational fee objectors for nonchargeable legislative expenses as set forth in the remedy section of this decision.

[259](e) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1," and the Lockheed

Missiles's notice marked as "Appendix VII-8,"[131] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and the amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return sufficient copies of the national notice, Lockheed Missiles' unit notice, and amended Policy for posting by Lockheed Missiles, if willing, at all locations where notices to Lockheed Missiles' unit employees are customarily posted.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

VII. District Lodge 720 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended

---

[131]See fn. 126, supra.

pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected from objectors Ruth Wright, Violet McFarland, Ronald Schmitt, Scott Herrington, and Richard Price for nonchargeable legislative expenses as set forth in the remedy section of this decision.

(c) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the McDonnell Douglas' unit notice marked as "Appendix VII-6."[132] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and the amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return sufficient copies of the national notice, McDonnell Douglas' notice, and amended Policy for posting by McDonnell Douglas, if willing, at all locations where notices to McDonnell Douglas' unit employees are customarily posted.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

VIII. District Lodge 751 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Failing to inform employees, who resigned their union membership and who did not receive the December 1988 or 1989 issue of the Machinist, that as a financial condition of employment under their contractual union-security clause, they are only

---

[132]See fn. 126, supra.

obligated to tender dues and fees to support union expenditures germane to the collective-bargaining process.

(b) Failing to respond to unit employees' misdirected attempts to become dues objectors with a correct statement of the place and manner to file such objections.

(c) Demanding that Boeing discharge unit employees for being in noncompliance with the union-security clause of the contract sooner than it would normally do so because those employees had resigned from the Union.

(d) Demanding that Boeing discharge unit employees for being in noncompliance with the union-security clause of the contract unless and until it has informed employees of the exact amount of their obligations to District 751, has informed them of the way in which such amounts were calculated and, further has provided a reasonable opportunity for employees to pay any amounts due to District 751 under the union-security clause of the collective-bargaining agreement.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[260]2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Notify each employee whose discharge was sought as set forth in appendix VI of the judge's decision, in writing, that the discharge attempt was withdrawn and will not be renewed.

(c) Notify the Employer, in writing, with a copy to each employee, that the discharge request is withdrawn and will not be renewed.

(d) Post at its union hall offices copies of the attached national notice marked " Appendix VII-1" and the Boeing unit notice marked as "Appendix VII-9."[133] Copies of the notice, on forms provided by the Regional Director for Region 34, after

---

[133]See fn. 126, supra.

being signed by Respondent Union's authorized representative, shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return sufficient copies of the national notice, Boeing's unit notice, and amended Policy for posting by Boeing, if willing, at all locations where notices to Boeing's unit employees are customarily posted.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Union has taken to comply.

IX. Local Lodge 78 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Delaying or reducing the fees sought and accepted from recognized objectors after a proper objection has been filed.

(b) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected for nonrepresentational expenditures from employees Michael

Meunier, Alan Stang, Thomas Gratz, Richard Marin, and Richard Dietich for the periods they were or should have been perfected objectors as set forth in the remedy section of this decision.

(c) Post at its union hall offices copies of the attached national notice marked " Appendix VII-1" and the GE Medical's unit notice marked as "Appendix VII-11."[134] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return sufficient copies of the national notice, GE Medical's unit notice, and amended Policy for posting by GE Medical, if willing, at all locations where notices to GE Medical's unit employees are customarily posted.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Sign and return sufficient copies of the national notice, Lockheed Missiles' unit notice, and amended Policy for posting by Lockheed Missiles, if willing, at all locations where notices to Lockheed Missiles' unit employees are customarily posted.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

[261]X. Local Lodge 354 of the International Association of Machinists and Aerospace Workers shall

---

[134]See fn. 126, supra.

1. Cease and desist from

(a) Failing to inform employees Mark Bluteau and Martha Payne after they resigned from the Union that as a financial condition of employment under their contractual union-security clause they are only obligated to tender dues and fees necessary to support union expenditures germane to collective bargaining.

(b) Applying its Policy to prevent employees in the Dynamic Controls' collective-bargaining unit who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process for a reasonable time after their resignations.

(c) Threatening to seek the discharge of employees who were or should have been perfected objectors for failure to pay fees which include charges for nonrepresentational expenditures.

(d) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide nonmember employees Mark Bluteau and Martha Payne and all nonmember employees as they enter into a bargaining unit covered by a union- security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Recognize employees Gene Dinsmore, Martha Payne, and Mark Bluteau as objecting nonmembers for calendar year 1990.

(c) Refund with interest all fees collected for nonrepresentational expenditures from employees Dinsmore, Payne, and Bluteau for the periods they were or should have been perfected objectors.

(d) Amend its Policy to make it clear that employees who resign from the Union may file objections to collection of fees for nonrepresentational expenses for a reasonable time after their resignation.

(e) Refund with interest all fees collected from objectors for nonchargeable legislative expenses.

(f) Notify in writing, each employee whose discharge was sought as set forth in appendix VI of the judge's decision, including employees Bluteau, Payne, and Dinsmore that the discharge attempt was withdrawn and will not be renewed.

(g) Notify the Employer in writing, with a copy to each employee, that the discharge request is withdrawn and will not be renewed.

(h) Post at its union hall offices copies of the attached national notice marked " Appendix VII-1" and the Dynamic Controls' unit notice marked as "Appendix VII-2."[135] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Union's authorized representative, and the amended Policy shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Sign and return sufficient copies of the national notice, Dynamic Controls' unit notice, and amended Policy for posting by Dynamic Control, if willing, at all locations where notices to Dynamic Controls' unit employees are customarily posted.

(j) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Union has taken to comply.

XI. Local Lodge 821 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

---

[135]See fn. 126, supra.

(a) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(b) Misleading unit members who have recently resigned from the Union that they are not entitled as a matter of right to file dues objections after their resignations irrespective of its Policy limiting such objections to the month of January.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected from unit employee nonrepresentational fee objectors Constance Downs, Norman Rydwell, Grebell Aila, Linda Capurro, Jerry Trunnell, Janice Bern, and others for **[262]**legislative expenses as set forth in the remedy section of this decision.

(c) Consider unit employees Downs, Rydwell, Aila, Capurro, Trunnell, Bern, and Don Church to have become objectors on a date 1 week after it misled them into believing they were not eligible to file objections and refund to each employee, with interest, all dues and fees collected thereafter when the employees would have been objectors but for its conduct which are in excess of those properly collected from objecting unit members.

(d) Post at its union hall offices copies of the attached national notice marked " Appendix VII-1" and the Lockheed Service's unit notice marked as "Appendix VII-7."[136] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employ-

---

[136]See fn. 126, supra.

ees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return sufficient copies of the national notice, Lockheed Service's unit notice, and amended Policy for posting by Lockheed Service, if willing, at all locations where notices to Lockheed Service's unit employees are customarily posted.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

XII. Local Lodge 946 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Failing to inform newly hired nonmember employees and those transferred into the bargaining unit that as a financial condition of employment under their contractual union-security clause they are only obligated to tender dues and fees to support union expenditures germane to the collective-bargaining process.

(b) Incorrectly informing employees in the Aerojet unit that they must pay a reinstatement fee to continue as employees in the unit.

(c) Incorrectly informing employees in the Aerojet unit that they must pay a reinstatement fee before being allowed to resign from the Union.

(d) Threatening employees with discharge if they did not pay reinstatement fee not properly due under the contract.

(e) Attempting to cause the discharge of employees for failing to pay a reinstatement fee not properly due under the contract.

(f) Failing to timely respond to unit employees' misdirected attempts to become dues objectors with a correct statement of the place and manner to file such objections, thereby delaying objectors from filing dues objections.

(g) Denying the objector status of such objectors or attempting to collect full dues and fees from them.

(h) Collecting or retaining previously collected nonchargeable reinstatement fees from objecting nonmembers and fees which are attributable to nonchargeable reinstatement fees or legislative expenses.

(i) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all nonchargeable reinstatement fees collected from objectors and fees attributable to nonchargeable legislative expenses as set forth in the remedy section of this decision.

(c) Notify each employee in writing, whose discharge was sought as set forth in appendix III of the judge's decision, in writing, that the discharge attempt was withdrawn and will not be renewed.

(d) Notify the Employer in writing, with a copy to each employee, that the discharge request is withdrawn and will not be renewed.

(e) Post at its union hall offices copies of the attached national notice marked " Appendix VII-1" and the Aerojet's unit notice marked as "Appendix VII- 5."[137] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Union's authorized representative, and its amended Policy shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

---

[137]See fn. 126, supra.

(f) Sign and return sufficient copies of the national notice, Aerojet's unit notice, and amended Policy for **[263]**posting by Aerojet, if willing, at all locations where notices to Aerojet's unit employees are customarily posted.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Union has taken to comply.

XIII. Local Lodge 1125 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Applying its Policy to prevent employees in collective-bargaining units represented by the Union who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process.

(b) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember and employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Recognize employees Beldon Lyons and William Koehly as objecting nonmembers for calendar years 1990 and 1991, respectively.

(c) Refund with interest all fees collected for non-representational expenditures from employees Lyon and Koehly for the periods they were or should have been perfected objectors.

(d) Amend its Policy to make it clear that employees who resign from the Union may file objections to collection of fees for nonrepresentational expenses for a reasonable time after their resignation.

(e) Refund with interest all fees collected from objector Lyons in calendar 1991 for nonchargeable legislative expenses as set forth in the remedy section of this decision.

(f) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the General Dynamics, Convair Division and Electronic Division's unit notice marked as "Appendix VII-10."[138] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Sign and return sufficient copies of the national notice, General Dynamics, Convair Division and Electronic Division's unit notice, and amended Policy for posting by General Dynamics, if willing, at all locations where notices to General Dynamics, Convair Division and Electronic Division's unit employees are customarily posted.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

XIV. (Allegations against Local Lodge 1327 of the International Association of Machinist were withdrawn prior to this decision. See footnote 97. Consequently, the Order that appears in the judge's decision has been deleted from the Board's Order.)

---

[138]See fn. 126, supra.

XV. Local Lodge 1871 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected for non-representational expenditures from employees David Mitchell, Lawrence Stone Jr., and other objecting nonmembers of the Electric Boat unit for calendar year 1991.

(c) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and **[264]**the Electric Boat's unit notice marked as "Appendix VII-3."[139] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Union's authorized representative, and its amended Policy shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return sufficient copies of the national notice, Electric Boat's unit notice, and amended Policy for posting by Electric Boat, if willing, at all locations where notices to Electric Boat's unit employees are customarily posted.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social

---

[139]See fn. 126, supra.

security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Union has taken to comply.

XVI. Local Lodge 1916 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Delaying or reducing the fees sought and accepted from recognized objector to the collections of fees from nonunion unit members for nonrepresentationalexpenses after a proper objection has been filed.

(b) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(d) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(e) Refund with interest all fees collected for nonrepresentational expenditures from employees Michael Meunier, Alan Stang, Thomas Gratz, Richard Marin, and Richard Dietich for the periods they were or should have been perfected objectors as set forth in the remedy section of this decision.

(f) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" the GE Medical's unit notice marked as "Appendix VII- 11."[140] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions immedi-

---

[140] See fn. 126, supra.

ately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Sign and return sufficient copies of the national notice, GE Medical's unit notice, and amended Policy for posting by GE Medical, if willing, at all locations where notices to GE Medical's unit employees are customarily posted.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

XVII. Local Lodge 2024 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Refund with interest all fees collected from objectors Ruth Wright, Violet McFarland, Ronald Schmitt, Scott Herrington, and Richard Price for legislative expenses as set forth in the remedy section of this decision.

(c) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the McDonnell Douglas'

unit notice marked as "Appendix VII - 6."[141] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized rep–**[265]**resentative, and its amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return sufficient copies of the national notice, McDonnell Douglas' unit notice, and amended Policy for posting by McDonnell Douglas, if willing, at all locations where notices to McDonnell Douglas' unit employees are customarily posted.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

XVII. Local Lodge 2227 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Failing and refusing to accept otherwise proper objections to the payment of fees for nonrepresentational expenses from nonmember unit employees because they were not submitted in individual envelopes.

(b) Accepting full dues and fees from unit employees whose objections were improperly rejected.

(c) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

---

[141]See fn. 126, supra.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Accept as objectors unit employees Elizabeth Morehouse, Ronaele Findley, Melville Arnot, James Humphreys, Leonard Kuhnleim, Denis McMahon, Donna Mendoza, Randall Sparks, and James Sumter effective January 1990.

(c) Refund with interest to employees Morehouse, Findley, Arnot, Humphreys, Kuhnleim, McMahon, Mendoza, Sparks, and Sumter all dues and fees collected in calendar year 1990 in excess of the amount properly collected from perfected dues objectors as set forth in the remedy section of this decision.

(d) Refund with interest all fees collected from unit employee nonrepresentational fee objectors for legislative expenses as set forth in the remedy section of this decision.

(e) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the Lockheed Missiles' unit notice marked as "Appendix VII-8."[142] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return sufficient copies of the national notice, Lockheed Missiles' unit notice, and amended Policy for posting by Lockheed Missiles, if willing, at all locations where notices to Lockheed Missiles' unit employees are customarily posted.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

---

[142]See fn. 126, supra.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

XIX. Local Lodge 2230 of the International Association of Machinists and Aerospace Workers shall

1. Cease and desist from

(a) Failing and refusing to accept otherwise proper objections to the payment of fees for nonrepresentational expenses from nonmember unit employees because they were not submitted in individual envelopes.

(b) Accepting full dues and fees from unit employees whose objections were improperly rejected.

(c) Collecting or retaining previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, **[266]**copies of its Policy, as amended pursuant to this Order, at the time the Union first seeks to obligate them to pay dues pursuant to the union-security clause.

(b) Accept as objectors unit employees Elizabeth Morehouse, Ronaele Findley, Melville Arnot, James Humphreys, Leonard Kuhnleim, Denis McMahon, Donna Mendoza, Randall Sparks, and James Sumter effective January 1990.

(c) Refund with interest to employees Morehouse, Findley, Arnot, Humphreys, Kuhnleim, McMahon, M. Mendoza, Sparks, and Sumter all dues and fees collected in calendar year 1990 in excess of the amount properly collected from perfected dues objectors as set forth in the remedy section of this decision.

(d) Refund with interest all fees collected from unit employee nonrepresentational fee objectors for legislative expenses as set forth in the remedy section of this decision.

(e) Post at its union hall offices copies of the attached national notice marked "Appendix VII-1" and the Lockheed Missiles' unit

notice marked as "Appendix VII-8."[143] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent Unions' authorized representative, and its amended Policy shall be posted by Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return sufficient copies of the national notice, Lockheed Missiles' unit notice and amended Policy for posting by Lockheed Missiles, if willing, at all locations where notices to Lockheed Missiles' unit employees are customarily posted.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Unions has taken to comply.

APPENDIX VII-1

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we presented evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with one copy of each additional notice dealing with particular Employers' bargaining units at our International Association of Machinists and Aerospace Workers, AFL–CIO (the IAM) offices and the offices of our District and Local Lodges involved in the local matters in which we were found to have violated the Act and our amended "Policy Regarding Fee Reduc-

---

[143]See fn. 126, supra.

tion for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy). Employers of the bargaining unit employees we represent involved herein have been supplied with signed copies of this notice, the appropriate local notice and our amended Policy for posting, if they are willing, at all locations where such notices to unit employees are customarily posted.

We have also been required to publish this notice and our amended Policy in one issue of the Machinist.

The Act requires that employees in collective-bargainingunits with contracts containing union-security language who object to the payment of dues and fees for union expenses not germane to collective bargaining not be required to do so. The Act also requires that unions establish certain policies and procedures to allow such employee rights to be exercised. The IAM has maintained and followed a Policy to effectuate those employee rights on behalf of the IAM and all our District and Local Lodges. The Board has found that our Policy and its implementation does not meet the minimum requirements of the Act in certain ways.

Given that finding, the Board has ordered us to give the employees we represent in collective-bargaining units within the jurisdiction of the Act involved herein the following assurances.

WE WILL NOT apply our Policy to prevent employees in collective-bargaining units represented by our Union who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process for a reasonable time after they have resigned.

WE WILL NOT apply our Policy to reject objections to the payment of fees for nonrepresentationalex–[267]penses which are not submitted by certified mail or are not submitted in individual envelopes.

WE WILL NOT fail to apply our Policy to initiation fees submitted by unit members of represented units whose contracts contain union-security clauses.

WE WILL NOT mislead potential objecting unit members by maintaining and publicizing our Policy with the provisions found improper in the decision of the Board underlying this notice.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL amend our Policy to make it clear that it applies to all mandatory payments collected from non-union member employees of bargaining units we represent pursuant to the terms of a union-security clause in a collective- bargaining agreement including initiation fees.

WE WILL amend our Policy to make it clear that employees who resign from the Union may file objections to the collection of fees for nonrepresentational expenses for a reasonable time after their resignation.

WE WILL amend our Policy to delete any requirement that objections be submitted by certified mail or in individual envelopes.

WE WILL cease publication of our unamended Policy which does not correctly inform and therefore may mislead nonmember employees respecting their rights to file objections to nonrepresentational fee collections.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a coy of the most recent December Machinist, copies of our Policy, as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL accept previously rejected objector applications, effective as of the date each application was first received, of all objectors whose applications were rejected because: (1) they were not submitted by certified mail or, (2) they were not submitted in individual envelopes, (3) they were filed within a reasonable time after resignation from the Union but not within the month of January, or (4) they were not properly filed because we failed to correct employees' misunderstandings about their rights and how these rights could be perfected.

WE WILL refund, with interest, all fees collected from individuals who were improperly denied objector status as described above collected during the time they should have been

considered objectors in excess of the amount properly collected from objectors.

WE WILL refund, with interest, all fees collected from objectors for improperly collected legislative expenses.

WE WILL publish our Policy with the amendments and deletions mentioned above by attaching it to this national notice wherever it is posted pursuant to the decision of the Board underlying this notice.

WE WILL publish the amended Policy in the issue of the Machinist in which this notice appears on the pages immediately following.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-2

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if Dynamic Controls is willing, at locations where the unit employees of Dynamic Controls we represent are employed.

We give the employees we represent at Dynamic Controls the following assurances.

WE WILL NOT fail to inform resigned union members who did not receive copies of the December Machinist magazine that as a financial condition of employment under their contractual union-security clause they are only obligated to tender dues and fees necessary to support union expenditures germane to collective bargaining.

WE WILL NOT apply our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the

Collective Bargaining Process" (Policy) to prevent employees in the Dynamic Controls' collective-bargaining unit we represent who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process for a reasonable time after their resignations.

WE WILL NOT threaten to seek the discharge of employees who were or should have been objectors for failure to pay fees which include charges for nonrepresentational expenditures.

WE WILL NOT collect or retain fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

[268] WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize employees Gene Dinsmore, Martha Payne, and Mark Bluteau as objecting nonmembers for calendar year 1990.

WE WILL notify each employee in writing, whose discharge we wrongfully sought, that the discharge request has been withdrawn and will not be renewed.

WE WILL notify Dynamic Controls in writing, with a copy to each involved employee, that the discharge requests have been withdrawn and will not be renewed.

WE WILL refund with interest all fees collected for nonrepresentational expenditures from employees Dinsmore, Payne, and Bluteau for the periods they were or should have been perfected objectors.

WE WILL amend our Policy to make it clear that employees who resign from the union may file objections to collection of fees for nonrepresentational expenses for a reasonable time after their resignation.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our Policy, as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL refund with interest all fees collected from objectors for nonchargeable legislative expenses.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 354 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-3

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if Electric Boat is willing, at locations where the unit employees of Electric Boat we represent are employed.

We give the employees we represent at Electric Boat the following assurances.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL refund with interest all fees collected for nonrepresentational expenditures from employees David Mitchell,

Lawrence Stone Jr., and other objecting nonmembers of the Electric Boat unit for calendar year 1991.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 1871 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-5

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at its offices and, if Aerojet is willing, at locations where the unit employees of Aerojet we represent are employed.

We give the employees we represent at Aerojet the following assurances.

WE WILL NOT fail to inform newly hired nonmember employees and those transferred into the bargaining unit that as a financial condition of employment under their contractual union-security clause they are only obligated to tender dues and fees to support union expenditures germane to the collective-bargaining process.

[269]WE WILL NOT incorrectly inform employees in the Aerojet unit that they must pay a reinstatement fee to continue as employees in the unit.

WE WILL NOT incorrectly inform employees in the Aerojet unit that they must pay a reinstatement fee before being allowed to resign from the Union.

WE WILL NOT threaten employees that we would seek their discharge if they did not pay reinstatement fees not properly due under the contract.

WE WILL NOT attempt to cause the discharge of employees for failing to pay a reinstatement fee not properly due under the contract.

WE WILL NOT, by failing to timely respond to unit employees' misdirected attempts to become dues objectors with a correct statement of the place and manner to file such objections, delay objectors from filing dues objections.

WE WILL NOT deny the objector status of such misguided objectors nor attempt to collect full dues and fees from them.

WE WILL NOT collect fees from objecting nonmembers which are attributable to nonchargeable reinstatement fees or legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL notify each employee in writing, whose discharge we wrongfully sought that the discharge request has been withdrawn and will not be renewed.

WE WILL notify Aerojet in writing, with a copy to each involved employee, that the discharge requests have been withdrawn and will not be renewed.

WE WILL refund with interest all nonchargeable reinstatement fees and fees collected from objectors for nonchargeable legislative expenses.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 946 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-6

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at its offices and, if McDonnell Douglas is willing, at locations where the Huntington Beach and Torrance, California employees we represent are employed.

We give the employees we represent at McDonnell Douglas the following assurances.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy) as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL refund with interest all fees collected from objectors Ruth Wright, Violet McFarland, Ronald Schmitt, Scott Herrington, and Richard Price for nonchargeable legislative expenses.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 720 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 2024 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

[270]APPENDIX VII-7

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if Lockheed Service is willing, at locations where the unit employees of Lockheed Service we represent are employed.

We give the employees we represent at Lockheed Service the following assurances.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT mislead unit members who have recently resigned from the Union that they are not entitled as a matter of right to file dues objections after their resignations irrespective of our Policy limiting such objections to the month of January.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most

recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL refund with interest all fees collected from unit employee nonrepresentational fee objectors Constance Downs, Norman Rydwell, Grebell Aila, Linda Capurro, Jerry Trunnel, Janice Bern, and others for legislative expenses.

WE WILL consider unit employees Downs, Rydwell, Aila, Capurro, Trunnell, Bern, and Don Church to have become objectors on a date 1 week after we misled them into believing they were not eligible to file objections and WE WILL refund to each employee, with interest, all dues and fees collected thereafter when the employees would have been objectors but for our conduct which are in excess of those properly collected from objecting unit members.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 120 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 821 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-8

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered

us to post this notice along with a "national notice" at our offices and, if Lockheed Missiles is willing, at locations where the unit employees of Lockheed Missiles we represent are employed.

We give the employees we represent at Lockheed Missiles the following assurances.

WE WILL NOT fail and refuse to accept otherwise proper objections to the payment of fees for nonrepresentational expenses from nonmember unit employees because they were not submitted in individual envelopes.

WE WILL NOT accept full dues and fees from unit employees whose objections were improperly rejected.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we **[271]**first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL accept as objectors unit employees Elizabeth Morehouse, Ronaele Findley, Melville Arnot, James Humphreys, Leonard Kuhnleim, Denis McMahon, Donna Mendoza, Randall Sparks, and James Sumter effective January 1990.

WE WILL refund with interest to employees Morehouse, Findley, Arnot, Humphreys, Kuhnleim, McMahon, Mendoza, Sparks, and Sumter all dues and fees collected in calendar year 1990 in excess of the amount properly collected from perfected dues objectors.

WE WILL refund with interest all fees collected from unit employee nonrepresentational fee objectors for nonchargeable legislative expenses.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 508 of the International Association of Machinists and Aerospace

LOCAL LODGE 2227 of the International Association of Machinists and AeroSpace Workers, AFL–CIO

LOCAL LODGE 2230 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-9

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if Boeing is willing, at locations where the unit employees of Boeing we represent are employed.

We give the employees we represent at Boeing the following assurances.

WE WILL NOT fail to inform employees, who resigned their union membership and who did not receive the December 1988 or 1989 issues of the Machinist, that as a financial condition of employment under their contractual union-security clause, they are only obligated to tender dues and fees to support union expenditures germane to the collective-bargaining process.

WE WILL NOT fail to respond to unit employees' misdirected attempts to become dues objectors with a correct statement of the place and manner to file such objections.

WE WILL NOT demand that Boeing discharge unit employees for being in noncompliance with the union-security clause of the contract sooner than we would normally do so because those employees had resigned from the Union.

WE WILL NOT demand that Boeing discharge unit employees for being in noncompliance with the union-security clause of the contract unless and until we have informed employees of the exact amount of their obligations to District 751, have informed them of the way in which such amounts were calculated and, further, have provided a reasonable opportunity for employees to pay any amounts due to District 751 under the union-security clause of the collective- bargaining agreement.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our " Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL notify each employee in writing, whose discharge we wrongfully sought that the discharge request has been withdrawn and will not be renewed.

WE WILL notify Boeing in writing, with a copy to each involved employee, that the discharge requests have been withdrawn and will not be renewed.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 751 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-10

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if General Dynamics is willing, at locations where [272]the unit employees of General Dynamics, Convair Division, and Electronic Division we represent are employed.

We give the employees we represent the following assurances.

WE WILL NOT apply our policy to prevent employees in collective-bargaining units represented by our Union who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL recognize employees Beldon Lyons and William Koehly as objecting nonmembers for calendar years 1990 and 1991, respectively.

WE WILL refund with interest all fees collected for nonrepresentational expenditures from employees Lyons and Koehly for the periods they were or should have been perfected objectors.

WE WILL amend our Policy to make it clear that employees who resign from the Union may file objections to collection of fees for nonrepresentational expenses for a reasonable time after their resignation.

WE WILL refund with interest all fees collected from objector Lyons in calendar year 1991 for nonchargeable legislative expenses.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 50 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 1125 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

APPENDIX VII-11

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if GE Medical is willing, at locations where the unit employees of GE Medical we represent are employed.

We give the employees we represent at GE Medical the following assurances.

WE WILL NOT delay or limit the fees sought and accepted from recognized objectors to the collection of fees for nonrepresentational expenses after a proper objection has been filed.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL refund with interest all fees collected for nonrepresentational expenditures from employees Michael Meunier, Alan Stang, Thomas Gratz, Richard Marin, and Richard Dietich for the periods they were or should have been perfected objectors.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 78 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

LOCAL LODGE 1916 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

[273]APPENDIX VII-12

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

After a trial at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act. The Board has ordered us to post this notice along with a "national notice" at our offices and, if Trane is willing, at locations where the unit employees of Trane we represent are employed.

We give the employees we represent at Trane the following assurances.

WE WILL NOT collect or retain previously collected fees from objecting nonmembers which are attributable to nonchargeable legislative expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide all nonmember employees as they enter into a bargaining unit covered by a union-security clause, and all nonmember employees who were not mailed a copy of the most recent December Machinist, copies of our "Policy Regarding Fee Reduction for Non-Members Objecting to Expenditures not Germane to the Collective Bargaining Process" (Policy), as amended pursuant to this Order, at the time we first seek to obligate them to pay dues pursuant to the union-security clause.

WE WILL refund with interest all fees collected from objector Robin Hanson in calendar year 1990 which are attributable to nonchargeable legislative expenses.

* * * *

APPENDIX C

DECISION OF THE

ADMINISTRATIVE LAW JUDGE

May 29, 1992

[320 N.L.R.B. 224, 273]

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

DISTRICT LODGE 66 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

* * * *

DECISION [of the Administrative Law Judge]
May 29, 1992

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above-captioned cases in trial commencing on May 22, 1991, in Hartford, Connecticut, and continuing thereafter at various locations throughout the United States of America through the following weeks. The record was closed on November 14, 1991. Posthearing briefs were submitted on January 28, 1992. The consolidated hearing arose as follows.

The above-captioned charges were originally filed in various Regional Offices of the National Labor Relations Board by the Charging Parties on various dates and were thereafter transferred by the General Counsel to the Hartford, Connecticut Regional Office, Region 34, receiving new case numbers in the process where appropriate. The specifics respecting each charge are not in dispute and are set forth in Appendix I.

On April 30, 1991, the Regional Director for Region 34 of the National Labor Relations Board (Regional Director) issued an order further consolidating cases, consolidated amended complaint and notice of hearing respecting the above-captioned cases,[1] thereafter various amendments were made. On October

---

[1]The April 30, 1991 order did not include certain cases which were added subsequently by agreement of the parties with concomitant amendments to the complaint. The order also included numerous additional charges, additional Charging Parties, additional complaint allegations, additional Respondents and counsel of record, all of whom and which are no longer part of these proceedings as a result of numerous settlements reached through the

18, 1981, the Regional Director issued his final amended consolidated complaint (complaint) and thereafter Respondents filed timely amended answers as appropriate.

The complaint alleges that the International Association of Machinists and Aerospace Workers, AFL–CIO (Respondent International, the International, or the IAM) and its District Lodges 50, 66, 115, 120, 190, 508, 720, and 751 (collectively, Respondent District Lodges, or individually as Respondent District Lodge, or District X) and its Local Lodges 78, 354, 821, 946, 1125, 1327, 1871, 1916, 2024, 2182, 2227, 2230, and 2771 (collectively Respondent Local Lodges, or individually as Respondent Local Lodge, or Local **[274]**X, or collectively, in conjunction with the International and the District Lodges, Respondent Unions or the Union) engaged in various acts and conduct in connection with their representation of various employees of various employers for purposes of collective bargaining in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). Respondent Unions deny that they have in any way violated the Act.

The complaint also alleges that California Saw and Knife Works (sometimes Respondent California Saw, the Employer, Respondent Employer or, collectively with Respondent Unions, Respondents) discharged Charging Party Peter A. Podchernikoff in violation of Section 8(a)(1) and (3) of the Act. Respondent Employer admits the discharge but avers that the discharge was required by the terms of a valid union-security clause and not in violation of the Act.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, to argue orally, and to file posthearing briefs.

---

laudable efforts of counsel—both counsel remaining of record and other counsel no longer of record—at various times throughout the litigation. The complaint was amended to omit the settled allegations and further amended from time to time to add other allegations. Because a complete recitation of each case consolidation, severance, and complaint issuance and/or amendment would needlessly burden the instant decision, the normal recitation of the history of the charges and pleadings will be omitted. Individual documents are discussed below where independently relevant.

On the entire record herein,[2] including helpful briefs from the General Counsel, counsel for various Charging Parties, Respondent Employer, and Respondent Unions, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT[3]

I. JURISDICTION

California Saw and Knife Works, a California corporation with an office and place of business in San Francisco, California, has been engaged in the manufacture and nonretail sale and distribution of circular sawplates and machine knives. During calendar year 1990, in the course and conduct of its business operations, California Saw and Knife Works sold and shipped from its San Francisco, California facility goods and materials valued in excess of $50,000 directly to points outside the State of California.

Aerojet General Corporation, a California corporation with an office and place of business in Sacramento, California, has been a defense contractor engaged, inter alia, in the production of missiles. During calendar year 1990, Aerojet General Corporation in the course and conduct of its business operations sold and shipped missiles and other goods valued in excess of $50,000 directly to the United States Government. The described

---

[2]The General Counsel's and Respondent Unions' unopposed motions to correct transcript are granted.

[3]As a result of the pleadings and the stipulations of counsel both orally at the trial and in the form of written stipulations and exhibits, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings here are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence. Where the pleadings, the stipulations, or the record otherwise establish uncontested facts or legal conclusions such as the agency relationship of certain individuals to particular Respondents or the Sec. 9 representative status of a labor organization or labor organizations in conjunction with particular bargaining units, the conclusions are noted without discussion.

operations have a substantial impact upon the national defense of the United States of America.

McDonnell Douglas Corporation, a Maryland corporation, has been engaged in the manufacture of aircraft, aerospace products, and related products at various locations throughout the United States of America, including facilities located on Bolsa Avenue, Huntington Beach, and Torrance Boulevard, Torrance, California. During calendar year 1990, McDonnell Douglas Corporation, in the course and conduct of its business operations, sold and shipped from its California facilities goods and materials valued in excess of $50,000 directly to points located outside the State of California.

Lockheed Aircraft Service Company, a Division of Lockheed Corporation, a California corporation with an office and place of business in Ontario, California, has been engaged in the manufacture and sale of aerospace products. During the calendar year 1990, Lockheed Aircraft Service Company, in the course and conduct of its business operations, sold and shipped goods and materials and provided services valued in excess of $50,000 directly to points located outside the State of California.

Lockheed Missiles and Space Company, Inc., a California corporation with offices and places of business in Sunnyvale and Santa Cruz, California, has been engaged in the business of defense contracting. During the calendar year 1990, Lockheed Missiles and Space Company, Inc., in the course and conduct of its operations purchased and received at its California facilities goods and materials and services valued in excess of $ 50,000 from points located outside the State of California.

General Dynamics Corporation, a Delaware corporation with its corporate headquarters in St. Louis, Missouri, has operated an aerospace manufacturing facility by its Convair Division and an electronic manufacturing facility by its Electronic Division, located in San Diego, California, a submarine facility by its Electric Boat Division located in Groton, Connecticut, and an aircraft manufacturing facility for the United States Government in Fort Worth, Texas. During calendar year 1990, in the course and conduct of its operations described above, General Dynamics Corporation purchased and received at its Convair Division, Electronic Division, Electric Boat Division and Fort Worth Division, respectively, goods and materials

valued in excess of $50,000 directly from points located outside the States of California, Connecticut, and Texas, respectively.

Dynamic Controls, a Connecticut corporation with an office and place of business in South Windsor, Connecticut, has been engaged in the manufacture of electronic control mechanisms for the aerospace industry. During calendar year 1990 in the course and conduct of its operations. Dynamic Controls sold and shipped from its Connecticut facility goods and materials valued in excess of $50,000 directly to points located outside the State of Connecticut.

The Boeing Company, a Delaware corporation with its principal offices and places of business in the greater Seattle, Washington area, has been engaged in the manufacture of aircraft and other products for the aerospace industry. During calendar year 1990 in the course of its business operations, The Boeing Company sold and shipped from its Washington State facilities goods and materials and provided services valued in excess of $50,000 directly to points located outside the State of Washington.

General Electric Medical Systems, a Division of General Electric Company, a New York corporation with an office and place of business located in Milwaukee, Wisconsin, has been engaged in the manufacture of medical diagnostic **[275]**equipment. During calendar year 1990, General Electric Medical Systems, in the course and conduct of its business operations, purchased and received at its Wisconsin facility goods and materials valued in excess of $50,000 directly from points outside the State of Wisconsin and, further, sold and shipped from its Wisconsin facility goods valued in excess of $50,000 to points located outside the State of Wisconsin.

Trane Company, a Wisconsin corporation with an office and place of business located in LaCrosse, Wisconsin, has been engaged in the manufacture and sale of heating, cooling, and ventilation systems and related products. During calendar year 1990 Trane Company, in the course and conduct of its business operations, sold and shipped from its Wisconsin facility goods and materials valued in excess of $50,000 directly to points located outside the State of Wisconsin.

The complaint alleges, the answers admit, and based on the above I find that each of the Employers described above is an

employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS

Respondent Unions and each of them are labor organizations within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

In gross terms, the prosecution in this consolidated proceeding challenges the way in which Respondent Unions have interpreted and applied the decision of the United States Supreme Court in *Communications Workers v. Beck*, 487 U.S. 735 (1988) (*Beck*), with respect to represented employees in the collective- bargaining units of the Employers set forth above. The instant consolidated proceeding includes almost 100 separate charges and Charging Parties involving employees throughout the United States of America.

The allegations directed to Respondent Unions include both "national" or common issues of general significance to the charges and complaint allegations and local situations and circumstances of relevance only to a small portion of the charges. The complaint also includes allegations against a single employer, California Saw and Knife Works. The complaint alleges that Respondent Employer improperly discharged an employee in the face of a demand to do so by Respondents International, District Lodge 115, and Local Lodge 1327.

The decision here is regrettably long and the issues both numerous and complex. In order to make the decision as intelligible as possible, general procedural challenges to the entire proceeding are addressed initially, followed by the "national" allegations of the complaint which challenge Respondent Unions' general handling of *Beck*. Thereafter the local allegations and contentions dealing with specific bargaining units are discussed.

A. *Threshold Procedural Issues*[4]

1. The Charging Parties' attempts to expand the issues of the complaint

Various Charging Parties at the trial and on brief thereafter have advanced theories of *Beck* violations which have in some cases been alleged in dismissed portions of the instant charges and/or are not part of the General Counsel's complaint allegations. In many cases the General Counsel expressly disavowed particular theories of the Charging Parties and, in other cases, the Charging Parties specifically admit that particular issues are raised "notwithstanding the General Counsel's refusal to do so," counsel for Charging Parties Taubman's brief at 2.

The Charging Parties have sought to justify and support the theories asserted by the citation of substantive decisional law under *Beck*. These cases are not, in my view, determinative of the issue of the Charging Parties' rights to expand the issues under the complaint. Rather, I find the controlling factor is the law respecting the General Counsel's discretion in respect of the issuance of complaints and the prosecution of such complaints before the Board under Section 3(d) of the Act.

In *Boilermakers Local 6 (Solano Rail Car Co.) v. NLRB*, 872 F.2d 331 (9th Cir.1989), the Ninth Circuit addressed the following events. The General Counsel in an unfair labor practice prosecution moved to withdraw the complaint on the ground that new information showed there was insufficient evidence of a violation of the Act to proceed. The administrative law judge denied the motion and allowed the charging party to produce evidence in support of the complaint after the General Counsel refused to do so. The General Counsel appealed this decision to the Board which, in an apparently unpublished decision, reversed the judge, allowing the withdrawal of the complaint. The charging party sought judicial review. The court, relying on *Machinists v. Lubbers*, 681 F.2d 598 (9th Cir.1982), cert. denied 459 U.S. 1201 (1983), held the General Counsel's nonreviewable authority to withdraw a complaint extends to the

---

[4]Issues and arguments respecting remedy are discussed in the remedy portion of this decision, infra.

period after the hearing has opened and evidence has been received, if the General Counsel determines there no longer is evidence to support the complaint. The court made the following policy statement in support of its holding:

> Finally, an ALJ cannot find a complaint's allegations have been proven until evidence on the merits has been introduced. If the General Counsel refuses to introduce this evidence, the ALJ must then either attempt to compel her to do so or allow the charging party to introduce evidence [as the ALJ did in this case]. In other words, the ALJ must either severely compromise the prosecutorial independence of the General Counsel or in effect convert the proceeding into a two-party private litigation. Either result is inconsistent with Congress's clear intent to create an essentially prosecutorial system of litigation in which the Board enjoys adjudicatory authority and the General Counsel enjoys prosecutorial authority. [872 F.2d 331, 332-334.]

[276]The Board and the courts have long held that the General Counsel under Section 3(d) of the Act has broad power over the initiation and prosecution of complaints in unfair labor practice proceedings. Given the case law on the issue, I find the complaint only encompasses what the General Counsel states that it encompasses, no more. Where the General Counsel has opposed the Charging Parties or where the Charging Parties' arguments go clearly beyond the reach of the complaint as issued and prosecuted by the General Counsel, the Charging Parties' arguments fail, not on their substantive merits which I have not considered, but on the grounds that only the General Counsel may adopt and include such arguments in a complaint under the Act. Accordingly, I confine my findings, analysis, and conclusions here to the General Counsel's complaint allegations and the theories he asserted in support thereof. The Charging Parties theories and allegations, where inconsistent with the position of, or opposed by the General Counsel, will not be further addressed.

2. Respondent Unions' general procedural defenses to the complaint

Counsel for Respondent Unions in their answers and on brief raise a variety of procedural challenges to the proceedings which are properly addressed before turning to the merits of particular complaint allegations.

a. *Procedural challenge to the scheduling and conduct of the consolidated proceedings*

Respondent Unions in the "Affirmative Defenses" portion of their final answer allege, inter alia:

> 3. The Complaint should be dismissed because it violates due process to require Respondents to respond to so many different charges filed over many years in one forum without adequate time to prepare a defense to said charges.

Respondent Unions are correct that the instant proceeding included a large number of charges involving numerous locations as well as various events occurring over a period of years. There is no question that the number and complexity of the legal issues presented—all in a single proceeding—combined to challenge all the parties, including Respondent Unions.

I do not believe however that the press of the litigation observably degraded the sufficiency of the legal representation of any party nor the parties' marshalling of evidence and argument. Nor do I believe the pace of the proceedings may be viewed as reasonably likely to have caused such a result even if undetected from the bench.

More specifically, although the hearing was opened for procedural argument and scheduling purposes on rather short notice, no party was obligated to present evidence or defend against the presentation of evidence by other parties at the initial hearing. The scheduling of subsequent hearings at which substantive matters were litigated was achieved, if not with the agreement of the parties, without formal objection or any effort to bring the issue to the Board for review. As the trial proceeded apace no requests for postponements were made other than for informal partial day adjustments which were accommodated without event.

At the conclusion of the presentation of evidence here, the General Counsel was directed to and did issue a final consolidated complaint and Respondents filed amended answers as appropriate. At that point in the proceedings all parties were again provided an opportunity to request additional hearings for the purpose of adducing additional evidence. No party so moved. Insofar as I am aware, no motion requesting an extension of time to submit posthearing briefs was denied.

Given all the above, I reject the affirmative defense on its facts. Thus I find a reasonable amount of time was provided the parties to consider and present their cases and to prepare and defend against the evidence and argument of others. Moreover, even were this not the case, Respondent Unions' failure to timely object to the scheduling of substantive hearings and briefs would estop them from raising the issue at this time.

b. *The issue of subject matter jurisdiction*

Respondent Unions in their affirmative defense 4 contend the complaint should be dismissed for lack of Board jurisdiction over the subject matter of the complaint.

Respondent Unions' contention here is not that the General Counsel has failed to prove the violations of the Act alleged in the complaint or that the Board should find the allegations without merit. Rather Respondent Unions argue that the Board should not consider the merits of the allegations because the conduct at issue is not properly before the Board or the General Counsel under Section 8 of the Act.

The Supreme Court has held that a union's duty of fair representation under the National Labor Relations Act is a matter for both the Board and the Federal courts. *Vaca v. Sipes*, 386 U.S. 171 (1967). The Supreme Court has also held that there are a panoply of rights and obligations arising between unit employees and the labor organizations that represent them concerning payments made under the compulsion of union-security language in collective-bargaining agreements under the National Labor Relations Act. *Communications Workers v. Beck*, 487 U.S. 735.

It is true that the Board has not as yet addressed *Beck* unfair labor practice allegations in a published decision. It may be that the Board will decide that conduct inconsistant with *Beck* does

not constitute an unfair labor practice. Whatever the Board may do with the instant case however, the cited cases persuade me the issues raised by the instant complaint are properly before the Board to decide. Accordingly the issues are also properly before an administrative law judge in the trial stage of an unfair labor practice proceeding. This affirmative defense is therefore without merit.

c. *The Charging Parties, the General Counsel, and the Board should await the exhaustion of union internal proceedings including the ruling of the arbitrator before proceeding on charges under Beck*

Respondent Unions' fifth affirmative defense is a contention that the complaint should be dismissed because the Charging Parties have failed to exhaust internal union remedies. Respondent Unions on brief note that the Federal courts regularly require plaintiff employees in failure of the duty of fair representation lawsuits to exhaust internal union remedies. The General Counsel correctly points out that the Board does not apply such a precondition to duty of fair rep–[277]resentation charges or complaints citing *Electrical Workers IBEW Local 581*, 287 NLRB 940, 948 fn. 25 (1987).

While arbitration procedures have in some circumstances engendered deferral by the Board and the General Counsel, such deferral has not been utilized where the arbitration is part of an internal union process or procedure arising independently of the collective-bargaining agreement.

Given the lack of Board authority for the deferral advanced by Respondent Unions, I find the affirmative defense is without merit.

d. *The General Counsel has failed to exercise his discretion in timely bringing the charges to complaint*

Respondent Unions allege in their affirmative defenses that the complaint should be dismissed because the General Counsel failed to exercise his discretion in bringing the charges to complaint. Separately pled are the contentions that the complaint

should be dismissed because of latches and because the complaint includes charges filed over many years.

Appendix I sets forth the date each charge was filed. A few go back to 1985 although the great bulk of charges are much more recent. While the consolidated complaint here which issued on April 30, 1991, was not the first complaint addressing these charges, it is true that quite some time passed between the filing of the earlier charges and the onset of the litigation by the General Counsel in the instant proceedings.

Absent some specific prejudice arising out of the General Counsel's stately pace in contemplation of, and in preparation for, the commencement of the instant unfair labor practice litigation, I am not aware of any authority supporting the proposition that the General Counsel at some point has simply waited too long to issue a complaint on a given charge or charges. I am also unaware of any Board case standing for the proposition that a complaint must be dismissed under the equitable doctrine of latches, under a constitutional due process theory or under any other theory based on the bare passage of time without a showing of either prosecutorial misfeasance or specific prejudice to a particular respondent.

Clearly the judicial authority underlaying the theory of the General Counsel's complaint is of recent origin and continues to evolve. At the time the earlier charges were filed here, what was to be the Supreme Court's lead case under the Act, *Beck*, was in the Federal courts working its way to the Supreme Court. One may well imagine that at least some of the charges herei[*sic*], were reserved pending the Court's *Beck* decision and consolidated thereafter. Such marshalling of cases for purposes of either awaiting Supreme Court decisions or for purposes of developing case law through coordinated litigation has not been held to be improper or to deny due process to the respondents involved.

Further, Respondent Unions have not established that the delay and consolidation was undertaken in bad faith by the Government to either perplex and undermine the defense or otherwise to deny or diminish its right to a fair hearing and effective defense. Nor have they convincingly demonstrated specific prejudice in litigating the complaint here. Given all the above, I find Respondent Unions' arguments based on delay do not require or even, within the scope of my discretion, permit the

dismissal of the complaint or any single allegation thereof on such grounds. These affirmative defense allegations shall therefore be dismissed.

e. *The complaint is not sufficiently related to the charges and/or the charges are untimely under Section 10(b) of the Act*[5]

Respondent Unions allege as affirmative defense number 10 that "many of the allegations" are untimely under Section 10(b) of the Act. In view of the number of charges filed herein as well the fact that at least some charges go back sufficiently far to precede all of the allegations, there is a related argument respecting whether or not particular charges support particular allegations.

The General Counsel reviews the current charges and argues the "national" allegations, section D of the complaint, are supported by timely charges which allege Respondent International required the Charging Party "and others" to pay fees equivalent to full dues, failed to disclose financial breakdowns of union expenditures, and, in essence, undertook each of the acts alleged in section D of the complaint to be in violation of Section 8(b)(1)(A) of the Act.

Counsel for Respondent Unions on brief at 166 notes that the charges do not support the "far reaching claims for relief that all nonmember represented employees covered by union-security clauses in every bargaining unit identified in the complaint" are entitled to relief under section D of the complaint. Thus, for example, Respondent Union notes only one employee charge dealing with General Dynamic's Fort Worth Division is part of this proceeding and that single charge involves only the application of the Union's *Beck* policy window period to the particular Charging Party's dues objector application. Thus, neither that charge, nor any other charge, argues the Union, sustains section D complaint allegations as to that unit. Counsel argues that similar charge inadequacies restrict the reach of the complaint allegations respecting other units.

---

[5]In certain cases 10(b) defenses relevant to particular charges are discussed under the appropriate complaint allegations, infra.

Both the General Counsel and Respondent Union discuss the Board's recent decision in *Nickles Bakery of Indiana*, 296 NLRB 927 (1989). In that case the Board held that complaint allegations must be closely related to the underlying charges on which they are based and not depend on the catch-all printed language on the charge form itself. The Board in *Nickles*, supra at 928, invoked the factors discussed in *Redd-I, Inc.*, 290 NLRB 1115 (1988), to find the complaint allegation sufficiently related to the charge. Thus, the "closely related test" necessary to determine if a complaint allegation is supported by a particular charge will include three determinations: (1) whether the same legal theories are involved, (2) whether the allegations arise from the same factual circumstances or sequence of events, and (3) whether similar defenses will be raised to the allegations.

The General Counsel argues that the charges herein deal with a common legal theory—i.e., *Beck* and its implications, arise out of the same factual circumstances and sequence of events—i.e., the enforcement of union-security provisions under the Act as well as the Union's policies in that regard and involve similar asserted defenses. Respondent Unions argue the relationship of the charges to the complaint allegations must be closer than the Government contends. Thus Respondent Unions argue that specific charge allegations must exist to support the specific allegations within section D of the complaint, i.e., a *Beck* violation charge should not **[278]**and cannot under *Nickles Bakery*, supra, support all the various permutations of violations alleged in section D.

While the issue is far closer than the General Counsel concedes, I agree on the facts of this case that the charges filed are sufficiently closely related to the allegations of section D of the complaint to support each allegation in that section and to sustain them under Section 10(b) of the Act. *Beck* rights, their specific requirements, and the processing of dues objector applications clearly present numerous types or forms of potential violations, many permutations of which are alleged in the complaint's section D. I do not find the Board test in *Nickles* or *Redd-I*, supra, requires an application of the closely related test under *Beck* on a more rigorous basis than the General Counsel suggests. Thus, I find, for example, that a complaint allegation challenging the Unions' certified mail requirement for dues

objector applications need not be supported by a charge with a similar specific contention. A charge alleging that the Union's *Beck* procedures are illegally restrictive is sufficient to support the allegation. Thus, I find it is permissible in this developing area of the law for charges to generally allege failure to comply with *Beck* rights. I find such general charges as exist herein support the specific complaint allegations at issue.

Accordingly I find that timely charges are sufficiently related to the violations alleged in the complaint to sustain them against a 10(b) defense. I shall therefore dismiss these affirmative defenses.

f. *The complaint improperly creates classes of unnamed employees under various allegations*

Various of the complaint allegations discussed, infra, refer to named employees and "others" or "other employers" in various phrasings as suffering wrongdoing and requiring relief. Respondent Unions attack such "class" allegations. Counsel for Respondent Unions argues first that the General Counsel could have identified the names of each member of the class alleged through the use of the broad subpoena power available under the Act. Second, counsel argues that the circumstances of each individual objector is in essence unique and therefore unnamed individuals are not fairly susceptible to litigation as members of an amorphous unidentified class. Such pleadings, argues Respondent Unions, simply shift the important portion of the litigation to the subsequent compliance stage of the proceedings thereby placing an unacceptable burden on Respondents. Finally, Respondent Unions notes such class litigation meets with disapproval in the Federal courts and should be equally disfavored before the Board.

The Board, with court approval, has frequently allowed the "similarly situated" or "class action" pleading objected to here by Respondent Unions. See for example, *Plumbers Local 403 (Pullman Power Products)*, 261 NLRB 257, 266 (1982), enfd. 710 F.2d 1418, 1419-1421 (9th Cir.1983), and cases cited

therein. Accordingly I reject Respondent Unions argument here.[6] The affirmative defense is therefore dismissed.

B. *National Issues—Complaint Section D*

1. An overview of Respondent Unions' structure and procedures

a. *The Union's organizational and financial structure*

Respondent International is an International labor organization representing employees in various occupations in the United States and Canada. The United States workers it represents are primarily employed in the private sector by employers under the jurisdiction of the Act and the Railway Labor Act with a small proportion employed in the public sector.

Respondent International is organized into six geographic territories as well as organizing and transportation departments. Within the IAM (also referred to as the Grand Lodge), are Local Lodges, the smallest organizational unit representing employees, and District Lodges, which are made up of Local Lodges. There was undisputed testimony that Local Lodges generally, and in some cases District Lodges, are the organizational units actually representing employees and negotiating and enforcing contracts. Some Local Lodges represent employees in a single industry; others represent employees in various industries. District Lodges are generally made up of two or more Local Lodges in a geographic area or industry. Only a few Local Lodges are not affiliated with a District Lodge.

At relevant times the IAM's domestic membership was somewhat over 800,000. It maintained approximately 1400 affiliated Local Lodges and significantly fewer District Lodges. The IAM and its suborganizational units were party to between 6500 and 8000 collective-bargaining agreements of which at least half contained union-security provisions. Respondent Unions General Secretary-Treasurer Thomas Ducy estimated

---

[6]Where special circumstances apply to particular complaint paragraphs, this issue is again addressed under the analysis of the relevant complaint allegation, infra.

that approximately 12,000 nonmembers were in represented bargaining units. In calendar year 1990 approximately 900 employees filed dues objection applications.

Union member and agency fee payer's periodic dues and initiation fees are paid to Local Lodges who send a portion of all dues and fees collected to the District Lodges with which they are affiliated. The Local Lodges also pay a per capita tax to the International.

District Lodges employ one or more business representatives whose duties include giving assistance to the Local Lodges within the District Lodge. The International reimburses the District Lodges for 50 percent of the cost of their business representatives' salaries and benefits. The International also maintains on its payroll staff whose duties include advising and assisting Local Lodges and District Lodges. This assistance is part of the services paid for by the per capita tax.

b. *The Union's dues objector procedures*

Respondent Unions have contracts with various employers which contain union- security clauses. These clauses, which are not under attack by the General Counsel, by their terms require covered employees to join and maintain membership in the IAM after an initial period of employment.[7]

---

[7]Sec. 8(a)(3) of the Act, as amended by the Taft-Hartly Act in 1959, contains a proviso:

> *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization ... (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

The Board in *Union Starch & Refining Co.*, 87 NLRB 779 (1949), enfd. 186 F.2d 1008 (7th Cir.1951), cert. denied 342 U.S. 815 (1951), interpreted this language as preventing a union under a union-security clause from requiring more than the tender of dues and initiation fees. Union-security clauses may be seen to be legally equivalent to agency shop clauses which typically provide an employee must either become a union member or pay the union a service fee—usually equal in amount to union dues. *NLRB v. General*

[279]Since 1986, the IAM has maintained a procedure for treating with nonmembers who object to the dues they pay pursuant to union-security clauses. The policy does not apply to union members. At relevant times this procedure (the policy)[8] has been announced and described in each December issue of the IAM's monthly magazine, the Machinist. Although discussed in greater detail, infra, the monthly magazine is generally intended to be mailed to the last known address of current dues and/or fee-paying members of represented collective-bargaining units. In the event such distribution is not achieved without errors and omissions.

At relevant times the policy has required nonmembers who do not wish to pay the portion of dues and fees spent by the Union on nonrepresentational activities to file their objections to such payments during either the month of January or during the first 30 days the objector is required to pay fees to the Union under the applicable union-security clause. The request from the objector (also referred to herein as the dues objector application) is required to be "in the form of an individually sent letter," signed and containing the objector's home address and local lodge number, if known. The request is required to be sent by certified mail to the International's secretary- treasurer.

Those individuals who properly submit a timely objection become "perfected objectors." Such individuals are sent a packet of information by the International summarizing the major categories of Grand Lodge expenses and explaining how dues reduction is calculated for the Grand Lodge. Perfected objectors are also informed of reductions in District and Local Lodge portions of their dues. Dues objectors have their dues reduced immediately consistent with a formulation based on past allocations and an escrow arrangement is put in place. See the policy terms quoted, infra, in Appendix V.

The International's accounts are disclosed to objectors but not all account categories are explained. Thus for example, accounting categories such as: human rights, community services, and special projects have allocations of both qualifying

---

Motors Corp., 373 U.S. 734 (1963).

[8]The policy is set forth in full in Appendix V of this decision.

and nonqualifying expenditures but the categories are not broken into smaller redefined or self-explanatory categories which contain entirely qualifying or nonqualifying expenditures or are otherwise explained.

Subsequently Respondent Unions' independent auditor issues his "Final Report of the Independent Auditor" for the particular calendar year. The report is a compendious document determining, inter alia, the ratio of Respondent International's qualifying and nonqualifying expenses from the International's accounts which have been audited by an independent firm of Certified Public Accountants. This ratio is used to reduce the portion of objectors' dues which are passed on to the International. District and Local Lodge dues' reduction formulae, based on a survey of a limited number of District and Local Lodges undertaken by Grand Lodge auditing staff, are calculated, prepared, and applied to all objectors uniformly without regard to the particular bargaining unit in which an objector is employed.

Based on the report, adjustments are made to equate amounts owing and amounts paid by objectors through the escrow account. In some cases, where objectors were liable for fees greater than had been collected, the Union has forgiven such obligations. Objectors are informed that their Local and District Lodge contributions are based on a survey of District and Local Lodges which has recently been supplied to the objectors.[9] Objectors are given the right, by challenging the figures, to have their own District and Local Lodges audited and a precise lodge specific formulation calculated. Objectors are also provided an opportunity to challenge the calculation of annual dues reduction. Those who challenge the dues reduction are provided an opportunity to participate in a single arbitration of the dues allocation determination for the year before an arbitrator. The Union pays the costs of the arbitration and bears the burden of justifying its calculations.

The policy provides further:

---

[9]The survey of District and Local Lodges was not disclosed to objectors challenging the dues allocation until mid-1990 so that objectors filing in 1988 and 1989 did not receive them and 1990 objectors did not initially receive them.

> Challengers shall bear all other costs in connection with presenting their appeal (travel, witness fees, lost time, etc.). Challengers may, at their expense, be represented by counsel or other representatives of choice.

Under the procedures, objectors must renew their dues payment objections annually in compliance with the policy's terms.

2. The evolution of *Beck* rights under the Act

a. *The duty of fair representation prior to Beck*

The progenitor of the now venerable doctrine of the duty of fair representation is *Steele v. Louisville & N.R.R.*, 323 U.S. 192 (1944) (*Steele*). In *Steele* the Court held the Railway Labor Act[10] in creating the right of a union to exclusive representation of unit employees implicitly imposed on that labor organization "the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them." Id. at 203. On the same day the Court issued *Steele*, December 18, 1944, it also decided *Wallace Corp. v. NLRB*, 323 U.S. 248 (1944), in which Justice Black for the majority held:

> **[280]**The duties of a bargaining agent selected under the terms of the [National Labor Relations] Act extend beyond mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. [323 U.S. at 255.]

In 1953 the Court in *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953), specifically applied the teachings of *Steele* to a labor organization under the Act. In 1962, 9 years later, the Board held for the first time in *Miranda Fuel Co.*, 140 NLRB 181 (1962),

---

[10] 44 Stat. 577 (1926), as amended by 48 Stat. 1185 (1934), 49 Stat. 1189 (1936), 54 Stat. 785, 786 (1940), 64 Stat. 1238 (1951), 78 Stat. 748 (1964), and 80 Stat. 208 (1966); 45 U.S.C. §§ 151-188. (Sometimes referred to in quotations from the parties' briefs as the RLA.)

that a labor organization's breach of its duty of fair representation was an unfair labor practice violating Section 8(b)(1)(A) and (2) of the Act.

b. *The Beck decision*

The Supreme Court, in *Machinists v. Street*, 367 U.S. 740 (1961) (*Street*), held that under the Railway Labor Act a labor organization could not require employees under a union-security clause to pay fees expended on activities beyond the union's collective-bargaining activities. On June 29, 1988, the Court in *Communications Workers v. Beck*, 487 U.S. 735 (1988) (*Beck*) held that its *Street* decision was controlling on cases under the National Labor Relations Act. The Court held that a union under the Act could not under the force of a union-security clause compel the support of nonunion members for "union activities beyond those germane to collective bargaining, contract administration and grievance adjustment." (Supra, 367 U.S. at 747, 754.)

c. *The state of current Beck law*

Beck is sufficiently new that a large body of clarifying and explaining precedent has not as yet emerged. While a very few administrative law judge decisions have issued, at least one of which is before the Board on exceptions, the Board has not as yet addressed the *Beck* holding. The United States Courts of Appeal have dealt collaterally with National Labor Relations Act *Beck* issues in only a very few cases. Existing duty of fair representation decisions issued by the Board and the courts in reviewing Board decisions are by analogy relevant to various aspects of *Beck* in varying degrees. Yet the procedural aspects of *Beck*'s requirements for unions present issues which are not closely analogous to the obligations required of unions in existing Board decisions.

Circuit and Supreme Court cases have addressed *Beck* issues under the Railway Labor Act and in the public sector. In these areas there is an evolving body of case law respecting many of the procedural challenges raised herein. Those cases however arise under different statutes and present constitutional issues

which are not necessarily identical to those arising under the National Labor Relations Act. The parties strongly disagreed and argued at length concerning the relevance of these "outside" cases to unfair labor practice duty of fair representation cases prosecuted by the General Counsel under the Act. These cases and the arguments made will be discussed, infra, where applicable to the specific issues discussed.

The Board in the Federal Register on March 5, 1992, published an advance notice of proposed rulemaking in effect asking for public comment on the question of whether it should use its rulemaking authority to define the statutory duties of unions arising under *Beck*. The Board at an open meeting held on May 4, 1991, voted to procede with rule matching and processing of current cases on parallel tracks. At the time this decision issued no hearing has been held nor were such rules in place.

3. The specific national complaint allegations

The General Counsel's general attack on the Union's *Beck* procedures is contained in section D of the complaint. Within section D of the complaint, paragraphs D,7 through 11 allege violations of the Act and are discussed separately below. For purposes of analysis they may be segregated into several categories based on the type of violation alleged. First, the General Counsel challenges the Union's procedures for notifying potential objectors of their rights to object to payment of that portion of dues and fees not determined to be representational within the meaning of the cases to be discussed, infra. Second, the General Counsel challenges the Union's policy restrictions and requirements concerning the form and timing of objector applications as being unduly restrictive in various ways. Third, the General Counsel challenges the manner in which the Union determines its annual allocation of dues and fees. Fourth, the General Counsel attacks the extent of the Union's disclosure of information to individuals challenging the Union's dues allocations before the arbitrator. Fifth, the General Counsel finds inadequate the degree of support provided by the Union to those unit members challenging the dues allocation before the arbitrator. Sixth, the General Counsel finds inadequate the credentials

and independence of those individuals preparing the audit of Local and District Lodges.

a. *Preobjection notification issues and allegations*

Complaint paragraph D,7 alleges that the Union failed to advise nonmembers covered by contracts containing union-security agreements "of their full right to object to the payment of dues and fees for nonrepresentational activities" by the acts and conduct alleged in the following subparagraphs. Subparagraph (a) alleges the IAM fails to mail or otherwise distribute its policy by annually publishing the policy inside the IAM's monthly magazine, the Machinist, without alerting recipients thereof by notation on the cover of the magazine that the policy is published therein. Subparagraph (b) alleges the Union fails to separately notify new nonmember employees when they are hired and new nonmembers upon their resignation from the Union of the policy. Subparagraph (c) of paragraph D,7 of the complaint alleges that the Union fails to notify and provide new nonmember employees when they are hired and new nonmembers upon their resignation a right to object to the compulsory exaction of dues and fees for nonrepresentational activities outside the limited window period set forth in the Union's policy. Only that portion of subparagraph (c) dealing with notification will be discussed here. The portion addressing provision of such a right outside the window period will be dealt with, infra.

It is clear that complaint paragraph D,7 raises two separate issues. First, what obligation, if any, does a labor organization bear under its duty of fair representation to unit members covered by a union-security clause to inform them of their *Beck* rights and the labor organization's procedures which facilitate that right? Second, assuming there is a duty **[281]**to inform employees of their rights, have Respondent Unions met that standard on the facts of the instant case? The existence of the obligation is addressed initially.

(1) The duty of a labor organization to initially disclose to unit members their *Beck* rights and the Union's *Beck* procedures[11]

(a) *Arguments of the parties*

The General Counsel on brief seems to make two independent arguments. The General Counsel's first argument is that *Beck* rights, while recently judicially mandated for employees under the National Labor Relations Act, are rights which the Board traditionally requires labor organizations to disclose to the employees they represent. Thus the General Counsel argues that under existing Board cases Respondent Unions are obligated to disclose to employees both their *Beck* rights and the existence and specifics of the Union's policy and procedures concerning those rights.

The General Counsel's second argument, although not so discretely set forth, is that, even if current Board law would not require initial union disclosure to employees of *Beck* rights, the *Beck* line of cases, including those decisions of the Supreme Court and the Circuit Courts of Appeal dealing with dues objector rights under the Railway Labor Act and in the public sector, mandates that the Board require such disclosure by labor unions including Respondent Unions here. This latter argument suggests that the Court in *Beck* and related cases not only created *Beck* rights but also created new corollary obligations on the part

---

[11] It is important throughout this decision to keep in mind the various stages during which union obligations to disclose information are at issue. The obligation under discussion in this section of the decision is that which a labor organization may owe to employees who have made no specific request for information and who have not indicated a desire to challenge dues or to invoke *Beck* rights. The General Counsel's complaint refers to employees' "initial *Beck* rights."

A labor organization's disclosure obligations to those represented employees who are perfected dues objectors are discussed, infra. A union's duty to supply information in response to a specific request by an employee for specific information involves yet a different standard and is not at issue here. Further, the duty of a union to correct unit employees' misinformation respecting *Beck* procedures is also different and is discussed, infra, concerning other allegations of the complaint.

of labor organizations under the Act to inform employees of those rights reversing, as necessary, contrary Board law.

The General Counsel and the Charging Parties argue, in effect, that these court cases have reversed any Board decisional law inconsistent with their holdings. To the extent that the General Counsel does not prevail in his argument that the cases under other statutes are controlling here, he advances various Supreme Court and courts of appeal decisions as at least persuasive and informative of the ramifications of *Beck* under the Act.

Turning to the initial argument, the General Counsel marshals a host of Board cases standing for the proposition that a union has a duty to inform the employees it represents about matters affecting their employment. Thus, the Board has found a union may not withhold from employees copies of the contract and the health and welfare plan that covers those employees, *Law Enforcement & Security Officers Local 40B (South Jersey Detective)*, 260 NLRB 419 (1982), nor may it fail to inform represented employees of changes in their collective-bargaining agreements. *Teamsters Local 896 (Anheuser-Busch)*, 280 NLRB 567, 575 (1986). The Board obligates unions to make reasonable efforts to inform hiring hall users of hiring hall procedures and also to notify hiring hall users of changes in those rules and procedures, *Electrical Workers IBEW Local 11* (*Los Angeles NECA*), 270 NLRB 424 (1984), enfd. 772 F.2d 571 (9th Cir.1985). Further a union is obligated to supply information about its hiring hall procedures and particular individuals' places on the registrar upon request, *Bartenders Local 165* (*Nevada Resort Assn.*), 261 NLRB 420 (1982); *Operating Engineers Local 324* (*AGC*), 226 NLRB 587 (1976).

The General Counsel argues further that the Board imposes a strict fiduciary duty on unions to inform employees of their obligations under union-security provisions citing *Helmsley-Spear, Inc.*, 275 NLRB 262 (1985), and emphasizes the admonition of the administrative law judge adopted by the Board in *Conductron Corp.*, 183 NLRB 419, 426 (1970), that a union may not properly seek the discharge of an employee for nonpayment of dues "unless as a practical matter the Union has taken reasonable steps to make certain that a reasonable employee will not fail to meet his membership obligation through ignorance or

inadvertence, but will do so only as a matter of conscious choice." See also *Valley Cabinet & Mfg.*, 253 NLRB 98, 108 (1980). These and other cases hold that, in view of the severe sanction imposed on the employee, i.e., discharge for failure to remit necessary dues and fees, the union must inform the employee of the "nature and extent of [the unit member's] membership obligation, including any dues-paying obligations," *Distillery Workers Local 38* (*Schenley Distillers*), 242 NLRB 370 (1979).

The General Counsel, while conceding that subsequent decisional law mooted the case line, argues that the Board in *Auto Workers Local 1384* (*Ex-Cell-O*), 227 NLRB 1045 (1977), required a union to notify members of limitations on their right to resign and the limitations on those rights if those limitations were to be subsequently enforced. The General Counsel also notes that the administrative law judge in *Retail Clerks Local 322* (*Ramey Supermarkets*), 226 NLRB 80, 90 (1976), while admittedly in dicta not adopted by the Board, suggested that a union had an obligation to inform employees of their "financial core" option before membership obligations could be imposed on them.

The General Counsel's second argument may be taken from its brief at 41:

> The rationale underlying these Board decisions is consistent with the positions taken by the Courts regarding nonmembers rights under the [Railway Labor Act] and in the public sector. Thus, the language quoted above from *Hudson*, 475 U.S. 292, 306 (1986):
>
> Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the non-union employee in the dark about the source of the figure for the agency fee—and requiring [him] to object in order to receive information—does not adequately **[282]**protect the careful distinctions drawn in *Abood*. [*Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292, 306 (1986), quoted at the G.C.Br. 36.]

indicates that "basic considerations of fairness," as well as the First Amendment, require disclosure of information to "potential objectors" who have not yet filed an objection. See also, *Grunwald v. San Bernardino Unified School District*, 917 F.2d 1223 (9th Cir.1990); *Tierney v. City of Toledo*, 824 F.2d 1497 (6th Cir.1987). In *Dean v. TWA*, [924 F.2d 805 (9th Cir.1991)], the Ninth Circuit applied the *Hudson* procedural requirements to union-security provisions under the RLA, holding that before a union can enforce an agency shop provision, it must have adopted procedures, including the advance notice requirement, to safeguard and employees right to object.[30] In light of these later cases, the Court's language in *Street* that dissent is not to be presumed, but must be affirmatively shown, can hardly be relied upon as the basis for an argument that the burden is upon the objector to come forward before he has any right to notice.

---

[30] It should be noted that, because *Hudson* and *Beck* involved "'agency-shop clauses, the employees' right to refrain from full membership was apparent from the contract itself. Employees subject to the union security clauses in issue here, which require 'membership'" as a condition of employment [borrowing the language of Section 8(a)(3)] could not be expected to know from reading the contract alone that this requirement is limited to "financial core" membership.

Charging Party counsel, Taubman, on brief argues in a marshalling of recent case law that the entire family of Supreme Court and circuit court decisions dealing with mandatory payments to labor organizations pursuant to contractual obligations, irrespective of their specific application to Railway Labor Act or public sector situations, "apply with equal force to employees working under the [National Labor Relations] Act." He also addresses an anticipated union defense on brief at 8:

Citing *Price v. UAW*, 927 F.2d 88 (2nd Cir.1991), the IAM will likely argue that its conduct is not subject to the

> [Railway Labor Act and public sector cases] standards, but rather is subjected merely to an "arbitrary, capricious or negligence" standard (which has unfortunately come to characterize the standard applied in some duty of fair representation cases, such as *Steelworkers v. Rawson*, 495 U.S. 362 (1990)). While IAM's argument might be true if the Board was writing on an entirely clean slate, it is obviously not true in light of the well-developed body of RLA and constitutional case law that the Supreme Court found "controlling" and "identical" in *Beck*.

Charging Party Counsel Young on brief argues that the recent court cases mean that a union may no longer make any "demand to a nonmember for fees greater than his pro rata share of the union's costs" without exceeding the authority granted under Section 8(a)(3) of the Act and committing a per se violation of the duty of fair representation.

The Union meets these arguments in a variety of ways. Addressing the General Counsel's argument that current case law under the Act supports the finding that unions have a obligation to disclose *Beck* rights and the unions procedures established to address those rights to unit members as part of the union's traditional duty to fairly represent employees, counsel for Respondent Unions argues a longstanding distinction has existed between statutory and contractual rights which the General Counsel does not acknowledge nor address. The failure to note this important distinction, argues counsel for Respondent Unions, renders the General Counsel's and the Charging Parties' arguments and citations both misleading and distinguishable. Respondent Unions' counsel specifically notes that the cases cited by the General Counsel all address rights created by contracts with employers or, go to the contractual provisions themselves. These holdings counsel argues, are simply not in point.

Respondent Unions advance their distinction between statutory and contractual rights and a labor organization's differing obligations with respect to them in the union-security context. Thus a unit member's obligation under a union- security clause to pay moneys to the union is a contractually created obligation which would not exist without a contract in place.

Employees' rights to refrain from joining the union under the compulsion of a union-security clause, employees' rights under Section 19 of the Act to decline to pay dues to the union and employees' rights under *Beck* to object to paying nonrepresentational portions of dues—all these rights—are derived from the statute as interpreted and applied by the Board and the courts. They do not derive from the contract itself. These statutory rights, argues counsel for Respondent Unions, need not be disclosed to employees by a labor organization under the Act and no Board or court case has ever so held.

Respondent Unions' counsel argues that there is at least one Supreme Court case holding that there is no obligation to disclose statutory rights to employees, even if knowledge of those rights might well assist employees in fully exercising their rights under the Act. Thus Respondent Unions argue that in *NLRB v. Weingarten*, 420 U.S. 251, 257 (1975), the Supreme Court affirmed the Board's rule that an employer was not obligated to inform employees of their statutory rights respecting disciplinary interviews and cites other cases holding employers are not obligated to inform employees of statutory rights including *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984).

Respondent Unions' counsel asserts that there are simply no cases under the Act where unions have been held under the duty of fair representation to inform employees about their statutory rights as opposed to their contractual rights. Counsel does not dispute the citations of the General Counsel respecting union obligations to disclose hiring hall rules, contract language, grievance holdings, etc., to unit members. He argues rather that these cases all deal explicitly with contractual rights and obligations and do not involve statutory rights like *Beck* rights and are therefore irrelevant to the issues herein in dispute.

Respondent Unions acknowledge the Board doctrine established in *NLRB v. Hotel & Restaurant Employees (Philadelphia Sheraton Corp.)*, 320 F.2d 254, 258 (3d Cir.1963) (sometimes *Philadelphia Sheraton*), enfg. 136 NLRB 888 (1962), as cited by the General Counsel. Continuing his argument, counsel for Respondent Unions emphasizes that the *Philadelphia Sheraton* line of cases address contractual rights. As such it fits into the distinction noted between stat–**[283]**utory and contractual rights and does not address or create any

obligation on the part of a union to disclose statutory rights to employees. Pressing his argument, Respondent Unions' counsel notes that *Philadelphia Sheraton* and its progeny auger in favor of his noted distinction because the cases set specific requirements concerning the disclosure of contractual union-security obligations but do not create an obligation on the part of a union to notify a unit member of his statutory right to limit his or her membership to "financial core," i.e., a unit member's right not to join the union at all. The line of cases simply obligates a union to fully disclose to the unit member his or her contractual obligations, including the arithmetic specification of the obligation and how to satisfy those obligations, before the union may seek to enforce the contract's union-security provisions.

Counsel for Respondent Unions notes that the General Counsel does not contend that Respondent Unions are under an obligation to disclose a unit member's legal right to limit his commitment under a union-security clause to "financial core" membership. Thus, argues the Union, the General Counsel in effect admits in his argument in the instant case that at least some statutory rights need not be disclosed by a union to unit members in the context of union security. Counsel for Respondent Unions notes further that the General Counsel has dismissed allegations in the instant charges contending to the contrary and that Charging Party arguments on this issue are simply outside the scope of the complaint and contrary to the General Counsel's theory of the case.

Counsel for Respondent Unions does not simply argue that the Board has declined to require unions to take the actions advanced by the General Counsel here. Rather he argues that the attempt of the Board in earlier years to expand its regulation of labor organizations into all aspects of their relations with employees was specifically rejected by the Supreme Court. Thereafter, and in admitted response to the Court's admonitions, the Union argues, the Board withdrew from such regulation.

Thus, Respondent Unions cites the Supreme Court's decision in *Teamsters Local 357* (*Los Angeles-Seattle Motor*) *v. NLRB*, 365 U.S. 667 (1961), which rejected the Board's decision in *Mountain Pacific Chapter*, 119 NLRB 883 (1958). The Court rejected the Board's establishment of requirements for union's hiring hall provisions including the requirement that such

regulations be posted. Justice Douglas noted at 365 U.S. at 676-677:

> It may be that hiring halls need more regulation than the Act presently affords. As we have seen, the Act aims at every practice, act, source or institution which in fact is used to encourage and discourage union membership by discrimination in regard to hire or tenure, term or condition of employment. Perhaps the conditions which the Board attaches to hiring-hall arrangements will in time appeal to the Congress. Yet where Congress has adopted a selective system for dealing with evils, the Board is confined to that system. *Labor Board v. Drivers Local Union*, 362 U.S. 272, 284-290. Where, as here, Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme.
>
> . . . .
>
> Moreover, the hiring hall, under the law as it stands, is a matter of negotiation between the parties. The Board has no power to compel directly or indirectly that the hiring hall be included or excluded in collective agreements. Cf. *Labor Board v. American Ins. Co.*, 343 U.S. 395, 404. Its power, so far as here relevant, is restricted to the elimination of discrimination. Since the present agreement contains such a prohibition, the Board is confined to determining whether discrimination has in fact been practiced. If hiring halls are to be subjected to regulation that is less selective and more pervasive, Congress not the Board is the agency to do it.

Respondent Unions argue that, like the Board requirement of posting of hiring hall rules rejected by the Court, the General Counsel's proposed employee notification requirements here—which are virtually identical to the Board's earlier posting requirement for hiring hall rules, are simply another example of impermissible and overreaching government regulation.

Respondent Unions further note that the Board had earlier taken the view that a union-security clause which was not, on its face, limited to the language of Section 8(a)(3) of the Act, was to be disfavored and would not henceforth serve as a bar to a representation petition and thereafter withdrew from that

position.[12] Thus the Board in *Paragon Products Corp.*, 134 NLRB 662 (1961), reversed its earlier *Keystone Coat* representation case rule holding, and again allowed contracts with union-security clauses that did not track the precise language of the statute to act as a bar to representation cases and did so expressly because of the Supreme Court's holdings, cited supra, disapproving its regulatory zeal.

The Union also directly addresses the contention of the General Counsel and the Charging Parties that the *Beck* decision and related decisional law under the Railway Labor Act and in the public sector compel the Board to require union disclosure of this newly identified statutory right even if the Board had not required such labor organization disclosure previously. Counsel for Respondent Unions concedes the existence of a "body of public sector dues objector procedures, **[184]**concerning, for example, the constitutionally necessary content of notice, procedures for seeking objections, placement of notice, and the nature of the audits required," (U.Br. at 10). He argues further however, on brief at 10-11:

> But this is not a First Amendment case, and those judicially-developed rules have no application here. The First Amendment limits governmental action but does not

---

[12]The Board in *Keystone Coat Co.*, 121 NLRB 880 (1958), limited the effectiveness of contracts with unions-security clauses that did not on their face conform to the requirements of the Act because of the Board's belief that ambiguous, unclear or general language in union-security clauses could be misinterpreted by employees. The Board stated at 121 NLRB at 884:

> To hold that agreements containing union-security clauses which do not conform to the Act are effective bars to elections the Board would thereby impliedly recognize as valid that which by its own language falls short of the statutory limitations. Indeed, if the Board honored for contract bar purposes the provisions of union-security clauses that exceeded the permissive limits [the union-shop proviso of Section 8(a)(3) of the Act], it itself would be contributing to the undermining of the freedom of choice which is guaranteed by the Act to the individual employee—the primary beneficiary of the law.

The Board made it clear that its goal was to limit the power of "those parties who, because of the sophistication and deliberate use of ambiguity seek to infringe on the rights of individual employees." (Id. at 884.)

apply to private parties. See, e.g., *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). *Hudson* involved state action through public employment contracts.[3] The instant charges in contrast involve the administration of wholly voluntary collective bargaining agreements between private unions and *private* employers.

The courts that have addressed the question unanimously agree that the actions of unions under the NLRA in administering their dues objector programs are not subject to "First Amendment scrutiny." *Hudson*, 475 U.S. at 304. See, e.g., *Price v. UAW*, 927 F.2d 88, 91-92 (2nd Cir.), cert. denied, 112 S.Ct. 295 (1991); *Kolinske v. Lubbers*, 712 F.2d 471 (D.C.Cir.1983); *Abrams v. CWA*, 702 F.Supp. 920 (D.D.C.1988), aff'd, 884 F.2d 628 (D.C.Cir.), cert. denied, 110 S.Ct. 540 (1989). See also, *Steelworkers v. Sadlowski*, 457 U.S. 102, 121 n. 16 (1982) (union rule does not involve state action); *Steelworkers v. Weber*, 443 U.S. 193, 200 (1979) (collectively-bargained affirmative action plan not subject to constitutional scrutiny). Significantly, the opinion in *Beck*, which the General Counsel no doubt will attempt to tie to the *Hudson* opinion, does not so much as cite *Hudson*.

---

[3]The Railway Labor Act cases involve state action to some degree through Section 2, Eleventh, of the RLA, which preempted state "right to work" laws and compelled governments to allow union shops. See *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956). There is no analogous provision in the NLRA. See generally *Price*, 927 F.2d at 92. The question whether *Hudson* procedures are required under the RLA given the nature of the state action involving in that case has not been addressed by the Supreme Court. At least one court has suggested that they are not. See *Kidwell v. TCU*, 946 F.2d 283 (4th Cir.1991). In any event, the procedural cases upon which dues objectors rely are public sector cases, and not RLA or NLRA cases.

Respondent Unions also quotes the United States Court of Appeals for the Ninth Circuit in *Evangelista v. Inlandboatmen's Union*, 777 F.2d 1390, 1397 (9th Cir.1985):

> Finally, *Evangelista's* argument that the [union] failed to inform her of her right to appeal the seniority determination through the intraunion appeals process is unavailing. Union members have a duty to become aware of the nature and availability of union remedies.

(b) *Analysis and conclusions*[13]

The two arguments made above, first that existing Board decisions support a requirement that labor organizations disclose *Beck* rights to unit employees and, second, that the *Beck* decision and subsequent decisions of the courts require such a holding, merit separate consideration.

(i) Does existing Board case law require union disclosure of *Beck* rights and/or other statutory as opposed to contractual rights?

---

[13]As noted supra, the Charging Parties have urged various theories of violations of the Act beyond the language of the complaint or the stated positions of the General Counsel. As Respondent Unions' counsel has pointed out some of these theories were contained in portions of the charges underlying this proceeding dismissed by the General Counsel. Those arguments are not before me for resolution.

The General Counsel under Sec. 3(d) of the Act has final authority over the issuance and prosecution of complaints before the Board. Counsel for the General Counsel therefore has plenary control over the complaint in an unfair labor practice proceeding such as the instant matter. The General Counsel during the trial and on brief has made it quite clear what his theories of violations are under the complaint and are not. Where the Charging Parties assert theories of violations which go beyond the reach of the complaint as defined and limited by the General Counsel, their arguments must fail on procedural grounds without reaching the substantive merits of their arguments.

The General Counsel's complaint is therefore all that I have before me for resolution. All broader arguments and theories of the Charging Parties are hereby dismissed as precluded by the General Counsel's rejection of them in exercise of his final authority under Sec. 3(d) of the Act. My analysis below shall be limited to allegations falling within the General Counsel's complaint as explained and defined by the General Counsel at trial and on brief.

The Board has not addressed *Beck*, nor the disclosure issues raised here, as of the date of this decision.[14] It is necessary therefore to reason by analogy from current Board law in dealing with the *Beck* rights at issue here. What rights are most analogous to those set forth in *Beck*? Given their common union-security context and statutory basis, I find *Beck* rights to be analogous in the disclosure context to those afforded qualifying unit members under Section 19 of the Act.[15] Both *Beck* rights and Section 19 rights apply exclu–**[285]**sively to unit members facing the apparent compulsion of a union-security clause whose language does not necessarily make obvious the full panoply of rights which an individual unit member who does not desire to join the union may invoke to lessen the apparent obligations of

---

[14]Respondent Unions cited the June 12, 1990 decision of Administrative Law Judge Biblowitz in *Teamsters Local 493 (General Dynamics)*, JD(NY)-56-90, in which the judge dismissed an allegation that the union therein had an affirmative obligation to notify its members of their *Beck* rights. I notice administratively that Judge Biblowitz's decision was adopted by the Board in the absence of exceptions in an unpublished order dated August 21, 1990. Accordingly, while Judge Biblowitz's analysis is useful, the decision is not binding authority.

The General Counsel cited the October 23, 1991 decision of Administrative Law Judge Heilbrun in *Television & Radio Artists, Portland Local (KGW Radio)*, JD(SF)-121-91, addressing, inter alia, *Hudson*'s application to Board unfair labor practice cases. I notice administratively that the case remains before the Board on exceptions. Thus, Judge Heilbrun's analysis, while informative, is not binding authority.

[15]Sec. 19 of the Act initially added in 1974, Pub.L. § 93-360, 88 Stat. 397 (1974), to apply only to health care workers and amended in 1980, Pub.L.§ 96- 593, 94 Stat. 3452 (1980), to apply to all employees, provides in part:

> Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employee's employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund. . . . –

the clause. Both under *Beck* and Section 19 of the Act financial contributions to the union may be reduced. Further, if an individual unit member is ignorant of his or her Section 19 and/or *Beck* rights, he or she cannot affirmatively invoke them and thus seemingly loses the benefit such invocation brings.

The parties did not cite nor has my research disclosed any Board cases holding a union obligated to inform unit members of their rights under Section 19 of the Act. From this fact it may be argued that the Board does not require a union to disclose Section 19 or other statutory rights which, if properly invoked, could free qualifying unit employees from a portion of their obligation to pay dues and fees to a union under a union-security clause. There have been a continuing series of cases under the National Labor Relations Act concerning what information a labor organization must disclose to employees before the union seeks their discharge for failure to meet their union-security obligations. In no case to my knowledge has union disclosure to employees of their Section 19 rights been included in those Board requirements. The paucity of decisional law treating Section 19 of the Act undermines the strength of this argument, however.[16]

Turning to the analogy raised by counsel for Respondent Unions, it is clear from the numerous Board cases dealing with a union's disclosure obligations when dealing with unit employees subject to a union-security clause under the duty of fair representation, that there is no obligation to disclose to unit members their statutory rights to limit their membership to a financial core, i.e., limit their relationship to the union only to the tender of dues and initiation fees withholding any greater commitment. Thus, irrespective of the fact that a union-security clause may mislead unit members into believing they are obligated to join the union when, in fact, "the statutory mandate

---

[16]In *Transit Union Local 836 (Grand Rapids Coach)*, 293 NLRB 581 (1989), the Board dismissed an allegation that a union had improperly sought the discharge of an individual who refused to pay dues and initiation fees for religious reasons. The case turned on the statutory language of Sec. 19 respecting a "bona fide religion." There was no finding that the union had advised the employee of his statutory rights under Sec. 19 of the Act prior to seeking his discharge nor was disclosure an issue in the case.

does not compel full union membership—merely dues-paying membership." Morris, *The Developing Labor Law*, 1366 (2d ed. 1983), the Board has never required a union to disclose to unit employees at any time their statutory right to limit their participation under a union-security provision to financial core membership.[17]

Given all the above, and in agreement with counsel for Respondent Unions, I conclude that current Board law does not require unions under their duty of fair representation to disclose statutory as opposed to contractually established rights to the employees they represent. I further find that *Beck* rights are statutory rights akin to the rights under Section 19 of the Act and the rights under Section 8(a)(3) of the Act allowing a unit member to limit his or her relationship to the union to the tender of dues and initiation fees. Current case law does not require union disclosure of Section 19 rights to employees. Similarly, no case holds that a union need disclose a unit member's right to remain only a "financial core" or "merely dues paying member."[18] I therefore conclude that, as with the other statutory rights described above, there is no obligation on the part of a

---

[17] The General Counsel's citation of the administrative law judge's statement in *Retail Clerks Local 322 (Ramey Supermarkets)*, 226 NLRB 80, 90 (1976), that, in the judge's opinion, a union bears an obligation to inform employees of their "financial core option" before certain membership obligations could be imposed on them is not persuasive. First, the statement was dicta within the judge's decision. Second, the decision was adopted in relevant part by the Board only in the absence of exceptions and hence is not binding precedent.

[18] As the Union has noted, following the Supreme Court decisions in *Teamsters Local 357*, supra, and *NLRB v. News Syndicate Co.*, 365 U.S. 695 (1961), decided the same day, the Board in *Paragon Products Corp.*, supra, ended its previous practice of refusing to consider as a representation election bar any contract with a union-security clause that did not track the language of Sec. 8(a)(3) of the Act. Thus, if the Board had begun to evolve the notion that it was better to inform unit employees of the legal limits of union-security clauses rather than to allow the traditional language of union-security clauses to potentially confuse employees, that evolution was reversed over 30 years ago following a reversal by the Supreme Court of analogous requirements.

labor organization to disclose initial *Beck* rights to employees under current Board law.

(ii) Do the Supreme Court and circuit court decisions respecting public sector and Railway Labor Act employers require that the Board find unions obligated to disclose *Beck* rights and procedures to unit members under the duty to fairly represent employees?

If the Board's current holdings do not require union disclosure of statutory rights to unit employees under the duty of fair representation, do recent cases in the Supreme Court and circuit courts dealing with *Beck* issues under the Railway Labor Act and in the public sector command a change in Board law at least as to *Beck* rights? Put another way, has Board law been changed, even though the Board has not as yet spoken to acknowledge that fact.

In order to properly consider this issue, it is necessary first to consider the decisional law advanced by the General Counsel and the Charging Parties to determine its relevance to the allegations of the complaint. Second, assuming the relevance of some or all of the cases cited, the applicability of those cases to the National Labor Relations Act and their precedential force and effect on the Board and Sections 7 and 8 of the Act must be considered.

a. Public sector and Railway Labor Act dues objector cases and their relevance to the issue of a union's obligation to notify dues objectors of their Beck rights

In addition to the decisions in *Street* and *Beck* the Supreme Court has issued several cases dealing with dues objector issues including: *Railway Employees v. Hanson*, 351 U.S. 225 (1956); *Railway Clerks v. Allen*, 373 U.S. 113 (1963), both under the Railway Labor Act and *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986) (*Hudson*); and *Lehnert v. Ferris Faculty Assn.*, 111 S.Ct. 1950 (1991) (*Lehnert*), all under public sector statutes. The Court has also issued several analogous cases dealing with compulsory col–**[286]**lections of moneys and fees other than

union dues. In addition there are numerous decisions of the United States Courts of Appeal and Federal district courts on dues objector issues.

The Court in *Hudson* considered the procedures of a public sector union applicable to employees who objected to compelled payments pursuant to an agency shop clause. The Court noted, 475 U.S. at 302-303:

> The question presented in this case is whether the procedure used by the Chicago Teachers Union and approved by the Chicago Board of Education adequately protects the basic distinction drawn in *Abood [v. Detroit Board of Education*, 431 U.S. 209 (1977)]. "[T]he objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective-bargaining activities." *Abood*, 431 U.S. at 237.
>
> Procedural safeguards are necessary to achieve this objective for two reasons. First, although the government interest in labor peace is strong enough to support an "agency shop" [footnote omitted] notwithstanding its limited infringement on nonunion employees' constitutional rights, the fact that those rights are protected by the First Amendment requires that the procedure be carefully tailored to minimize the infringement. [Footnote omitted.] Second, the nonunion employee—the individual whose First Amendment rights are being affected—must have a fair opportunity to identify the impact of the governmental action on his interests and to assert a meritorious First Amendment claim. [Footnote omitted.]

The Court considered three challenges to the union's dues objector procedures. Initially it found any dues reduction procedure which provided for a late rebate of dissenters' funds, without first establishing a procedure that would avoid the risk that those funds would even temporarily be used by the union for activities unrelated to collective bargaining, was inadequate. Second, the Court found any union dues objection procedure which did not provide for a reasonably prompt decision by an

impartial decision maker on the dues allocation calculation was inadequate.

Third, and most importantly for the complaint allegations at issue here, the Court discussed the need for dues objectors to have certain information. The Court stated at 475 U.S. at 306:

> Second, the "advance reduction of dues" was inadequate because it provided nonmembers with inadequate information about the basis for the proportionate share. In *Abood*, we reiterated that the nonunion employee has the burden of raising an objection, but that the union retains the burden of proof: "Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion." *Abood*, 431 U.S. at 239-240, n. 40, quoting *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963).[16] Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information-does not adequately protect the careful distinctions drawn in Abood.[17]

---

[16]The nonmember's "burden" is simply the obligation to make his objection known. See *Machinists v. Street*, 367 U.S. 740, 774 (1961) ("dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee"; *Railway Clerks v. Allen*, 373 U.S. at 119; *Abood*, 431 U.S. at 238.

[17]Although public sector unions are not subject to the disclosure requirements of the Labor-Management Reporting and Disclosure Act, see 29 U.S.C. § 402(e), the fact that private sector unions have a duty of disclosure suggests that a limited notice requirement does not impose an undue burden on the union. This is not to suggest, of course, that the information required by that Act, see 29 U.S.C. § 431(b); 29 CFR § 403.3 (1985) is either necessary or sufficient to satisfy the First Amendment concerns in this context.

In *Tierney v. City of Toledo*, 824 F.2d 1497 (6th Cir.1987) (*Tierney*), the Sixth Circuit considered *Hudson* and the language quoted immediately above in a public sector agency shop case. The circuit court stated at 1503:

> *Hudson*'s second requirement is that the union procedure must "provide [ ] non-members with [ ]adequate information about the basis for the proportionate share" Id. In this regard the burden is upon the union to prove the proper proportion of political expenses to total union expenditures. Id. To fulfill this burden, *Hudson* admonishes the union to give "potential objectors . . . sufficient information to gauge the propriety of the union's fee," id. at 306-307 [emphasis supplied by the *Tierney* Court], before it collects any fees from nonmembers. Plainly the Supreme Court concluded that "requiring them to object in order to receive information" is impermissible. Id. at 307. The union's proportionate share figures for its "major categories of expenses, as well as verification by an independent auditor" must be disclosed to all nonmembers. Id. at 307 fn. 18. Such disclosure must include an audited, detailed accounting of local union payments to affiliated state and national labor organizations that will be used for agreement and non- agreement related purposes. Id. This information must also be disclosed to all nonmembers whether or not they have yet objected to the union's ideological expenditures.[2]

---

[2]Although public sector unions are not subject to the disclosure requirements of the Labor Management Reporting and Disclosure Act. See 29 U.S.C. § 402(e), "the fact that private sector unions have a duty to disclose suggests that a limited notice requirement does not impose an undue burden on the union." Id. at 307 fn. 17. Indeed, the union triggers no disclosure requirement until it voluntarily seeks to collect service fees from the non- union members.

In *Grunwald v. San Bernardino Unified School District*, 917 F.2d 1223 (9th Cir.1990), the Ninth Circuit in a public sector agency fee case specifically adopted the Sixth Circuit's interpretation in *Tierney* that *Hudson* required the union to give notice

of and adequate information concerning agency fees to all nonmembers before any fees could be collected from them. (917 F.2d at 1227.)

[287]In *Dean v. Trans World Airlines*, 924 F.2d 805 (9th Cir.1991), the Ninth Circuit noted at 808-809:

> In *Hudson*, the Court for the first time considered a challenge to a union's fee collection procedures, rather than to the fees themselves. The Court concluded that before collecting fees through an agency shop agreement, a union must adequately explain the basis for the fee, and provide a reasonably prompt opportunity to challenge it before an impartial decisionmaker. *Hudson*, 475 U.S. at 310.

The General Counsel in the portion of his brief quoted, supra, argues that these court cases "require disclosure of information" to all employees and therefore establish a duty on the part of labor organizations to disclose *Beck* rights and procedures to all employees. Respondent Union, in an argument addressed, infra, seeks to distinguish all public sector cases arguing their inapplicability to unfair labor practices under the Act, but does not otherwise address *Hudson's* applicability to the instant case.

At the threshold I am not persuaded that the Supreme Court in *Hudson* intended its second procedural requirement, quoted in full supra, to create a duty on the part of unions to disclose to employees covered by either a union-security or agency shop contract their various statutory and constitutional rights. I read *Hudson*'s language as more likely addressing the public sector union's obligation to give information to the employee who have already, as the Court noted at footnote 16, supra, met his burden to "make his objection known." Thus the language of the Court does not speak to the employee who has not as yet informed the union that he or she is either objecting or considering objecting to nonrepresentational dues expenditures.

Further the Supreme Court's reference to the reporting obligations of private sector unions under the Labor Management Reporting and Disclosure Act—for example the obligation under Section 102 to supply collective-bargaining contracts on request to affected employees—referred to in *Hudson* at fn. 17,

quoted supra, does not expand on present obligations under Board doctrine and therefore does not seem to support the existence of the broader disclosure obligation claimed by the General Counsel here. Thus in the setting of the instant case, I find the obligation in *Hudson* applies to employees who have already communicated their concerns about nonrepresentational expenditures to the union initially rather than to those employees who have taken no action whatsoever respecting dues objection. That is not the situation addressed here.

As noted above, the Sixth and Ninth Circuits in *Tierney* and *Grunwald* read *Hudson*'s requirement more broadly. They, too, however do not clearly create an "initial" disclosure obligation. Thus in *Tierney* supra at 1503 fn. 2, quoted in full, supra, the circuit makes it clear that the union has no disclosure requirement to unit employees unless and until it voluntarily seeks to collect service fees from the nonunion member. In a Board setting this would be an analogous obligation to those established in *NLRB v. Hotel & Restaurant Employees Local 568* (*Philadelphia Sheraton*), 320 F.2d 254, 258 (3d Cir.1963), enfg. 136 NLRB 888 (1962), respecting what must be disclosed to an employee before his or her discharge may be properly sought for a failure to comply with a union-security provision of a contract. See also the now mooted *Auto Workers Local 1384* (*Ex-Cell-O*), 227 NLRB 1045 (1977).

The *Tierney* interpretation of the *Hudson* obligation renders it inapplicable to the allegations of paragraph D,7 of the complaint. This is so because the General Counsel seeks to impose on Respondent Unions a duty to disclose *Beck* rights and Respondent Unions' *Beck* procedures initially to all nonmembers whether the union has or has not sought moneys from the unit members under the union-security clause. Thus in the General Counsel's view, and under complaint paragraph D,7 as I read it, the obligation to disclose *Beck* rights and the Unions' policy and procedures is not contended to be a simple precondition to soliciting dues and initiation fees, as required in *Tierney*, supra at fn. 2. Rather the General Counsel seems to be claiming a general disclosure obligation exists which may be violated before fees are sought or, indeed, even if fees are never sought from employees. Were the General Counsel's theory of a violation otherwise, the solicitation of fees would be part of the

Government's prima facie case which the General Counsel would be obligated to plead in his complaint and establish on the record. Such allegations and evidence are lacking here.

The implications of this distinction are not simply esoteric rumination but are critical to the litigation. Under *Tierney*, supra at fn. 2, a union has no obligation to contact new employees who come under the sway of a union-security clause. Rather the union may await the passage of time and thereafter contact only those employees who have not on their own initiative joined the union or tendered dues and initiation fees. Likely a certain number of employees would undertake such actions. Thereafter, only those employees who have done nothing and from whom the union wishes to seek funds need then under *Tierney*, fn. 2, be given their *Hudson* disclosures.

Under the General Counsel's theory and complaint paragraph D,7(b), a union must disclose employees' *Beck* rights and the Union's policy to all new nonmembers when they are hired and to new nonunion members upon their resignation from the Union. Further, as alleged at complaint paragraph D,7(a), the Union must also annually publicize its policy to all nonmembers at the very least by publication in Respondent Unions' monthly magazine's December issue with a prominent cover banner announcing the fact of the policy's appearance therein. These obligations exist, in the General Counsel's view, irrespective of any union effort to collect dues and/or fees from these individuals.

I simply do not read the cases cited by the General Counsel to support the broad universal disclosure requirements he avers, irrespective of the public sector case law applicability arguments made and discussed, supra. I do not read *Hudson* as broadly as *Tierney* does. Further, to the extent the cases, especially *Tierney*, support a *Hudson* created *Philadelphia Sheraton* type union precondition to collecting service fees and dues from nonunion members, that obligation is not broad enough to support the allegations of the complaint at issue here. Thus I do not find the cases advanced by the General Counsel persuasive of his theory of an initial disclosure obligation.

[288]b. *The force and effect of the Federal court decisional law under the Railway Labor Act and in the public*

sector on unfair labor practice law under the National Labor Relations Act

I have found, supra, that current Board law does not require unions to disclose statutory rights to represented employees. I have further concluded that *Beck* rights are not properly distinguished from other statutory rights under the Act. Accordingly I have held that Board law does not now require initial or unsolicited disclosure of *Beck* rights to employees by the unions that represent them.

The *Beck* decision, while the only decision to date by the Board or the Supreme Court on the issue under the National Labor Relations Act, is not the only decision in the evolving area of dues objection rights under union-security clauses in collective-bargaining agreements. As noted supra, decisions by the Supreme Court and the Federal courts have required unions not subject to the National Labor Relations Act to disclose *Beck* rights to employees. While these cases may be in dispute respecting their applicability to various portions of the complaint, there is no doubt that they are relevant to various issues here and in some cases would be dispositive if controlling under the National Labor Relations Act.

The issue remaining respecting these decisions, and one ably argued by the parties, is whether or not the cited decisions dealing with *Beck* issues under other statutes require a reversal of existing Board doctrine. Thus the question remaining for resolutions is: do current cases interpreting and applying dues objector rights in the public sector, such as *Hudson,* and/or under the Railway Labor Act as cited and discussed, supra, require[19]

---

[19]The emphasis is on the word require. *Beck* interposes a new statutory right on the existing fabric of Board decisional law. It does not create those new rights on an empty stage. Existing doctrines give *Beck* rights a foundation and context. No Board or court case under the National Labor Relations Act has addressed the issue of union disclosure of *Beck* rights to employees. While the issue may thus seem new, I have held that current Board law does not require unions to disclose statutory rights to employees and that *Beck* rights are such statutory rights. I therefore do not view the area of statutory disclosure as new to Board law or one on which the Board has not yet spoken.

reversal of the Board's current doctrine which does not require unions to inform represented employees of statutory rights?

There is no doubt that the Federal court public sector and Railway Labor Act cases cited above address *Beck* rights in a variety of postures. The Supreme Court in *Hudson* explicitly

---

The parties in varying degrees advance new propositions and approaches for my consideration under *Beck*. A major development in the law will often require not only new holdings but the modifications of older decisions. Certainly the Board in addressing *Beck* may wish, either by decision in the instant case or others and/or by issuance of new rules and regulations, to create an entirely new broad doctrine with implications not only for *Beck* issues but for other areas of Board law. The Board recently suggested it was considering rule making respecting *Beck* issues (29 CFR Part 103, Federal Register, Mar. 5, 1992) and voted to do so on May 4, 1991.

I specifically reject the suggestions of the parties that I fashion a broad new approach in the *Beck* area. It is simply not the province of an administrative law judge either to change Board law on his own motion or even to anticipate changes that he believes the Board will undertake in light of new developments. Changing the law is the special province of the Board and the court.

An administrative law judge is bound to follow and apply existing Board law. Judges may probe the interstices of existing law or determine the reach and breadth of new law, but they have no authority to undo or modify existing cases or make new law themselves. While judges may, perhaps, be bolder where they are dealing with new concepts not yet addressed by the Board, they must be cautious where the issue is whether existing Board law is to be distinguished. They must be more cautious where the issue is whether or not existing Board law has been overturned. The instant case presents the issue of whether current Board law has been overturned by decisions of the United States Courts in cases brought under statutes other than the National labor Relations Act. Such circumstances requires an even more conservative approach to overturning existing Board law.

Accordingly, even though *Beck* may require a broader and more creative sweep than set forth here, and even though it may be fairly predicted that the Board will make such broad and sweeping changes in current Board law to accommodate the Court's holding in *Beck*, resolution of the allegations of the complaint at this stage of the proceeding will be undertaken by an application of current law however clumsy and limited the result may seem. I view my limited discretion as allowing no more. For the parties to achieve more they must press on to the Board.

premised unions' obligations under agency fee clauses on First Amendment constitutional requirements in the public sector setting. As noted supra, the precedential value and persuasive effect of public sector cases informed by First Amendment constitutional issues to cases turning on statutory questions was vigorously argued by the parties.

The Supreme Court in *Beck* expressly declined to rule on the issue of whether a similar constitutional standard is necessary to apply to cases under the National Labor Relations Act, *Hudson*, 487 U.S. at 761. The Second Circuit considered this issue and specifically declined to apply *Hudson* to an action involving employees under the National Labor Relations Act in *Price v. Auto Workers*, 927 F.2d 88 (2d Cir.1991), cert. denied 112 S.Ct. 295 (1991).

The parties also argued at length the applicability of precedent under the Railway Labor Act to cases arising under the National Labor Relations Act. *Beck* made clear the controlling nature of *Street* to the issue decided in *Beck* because of the similarity of relevant language in the Railway Labor Act and the National Labor Relations Act. Differences between the provisions of the two Acts to the degree they allow states to exercise discretion over union-security clauses have raised separate issues concerning the constitutional question however. The Supreme Court in *Air Line Pilots v. O'Neil,* 111 S.Ct. 1127 (1991), a duty of fair representation case under the Railway Labor Act stated at 111 S.Ct. at 1137:

> We have made clear, however, that National Labor Relations Act cases are not necessarily controlling in situations, such as this one, which are governed by the Railway Labor Act. See *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969).

The cases seem to go both ways however. The United States Court of Appeals for the Fourth Circuit in *Crawford v. Air Line Pilots Assn.*, 870 F.2d 155 (4th Cir.1989), applied the *Hudson* procedural requirements to a case under the Railway Labor Act. See also *Dean v. Trans World Airlines*, 924 F.2d 805 (9th Cir.1991). But see *Kidwell v. Transportation Communications Union,* 946 F.2d 283 (4th Cir.1991), and *Price*, supra.

[289]Given all the above, I am unable to say with confidence that the current dues objector decisional law turning on constitutional requirements in the public sector is controlling over cases under the National Labor Relations Act. Nor am I able to say with confidence that similar cases under the Railway Labor Act are directly applicable to and controlling over cases under the National Labor Relations Act.

A further question is whether or not, even if *Hudson* and similar public sector Railway Labor Act cases were held controlling under the National Labor Relations Act, the Board's interpretation of the duty of fair representation in the context of an unfair labor practice complaint would necessarily parallel judicial interpretation of the duty of fair representation. As noted, supra, the Court's original evolution of a judicially implied duty of fair representation occurred under the Railway Labor Act. That duty was thereafter applied by the Federal courts to unions in their dealings with employees subject to the National Labor Relations Act. Several years later a union's failure to meet its duty to fairly represent employees became an unfair labor practice under Board decisional law.

The duty of fair representation under the Railway Labor Act has been the exclusive provenance of the Federal courts. As the Court noted in *Beck*:

> Unlike the National Labor Relations Act, however the Railway Labor Act establishes no agency charged with administering its provisions and instead leaves it to the courts to determine the validity of activities challenged under the Act. [487 U.S. at 743.]

The duty of fair representation under the National Labor Relations Act is interpreted and applied both by the Federal courts and the Board. The Supreme Court in *Vaca v. Sipes,* 386 U.S. 171, 182-183 (1967), in finding dual jurisdiction over duty of fair representation claims on behalf of both the courts and the Board, specifically noted both the Board's "tardy assumption" of the doctrine and the General Counsel's unreviewable discretion to refuse to issue an unfair labor practice complaint as ways in which the duty to fairly represent employees has been or could be differently interpreted by the courts and the Board.

Board decisional law under the duty of fair representation does not without exception track the decisional law of the United States Courts of Appeal nor does the Board normally rely on such court decisions as binding precedent in reaching its determinations in unfair labor practice duty of fair representation cases. In certain aspects, like the requirement for the exhaustion of union remedies, the two lines of authority, Board and Federal court, differ fundamentally. The Court views the Board's decisions in a similar light. In *O'Neil*, supra, Board duty of fair representation decisions were not regarded by the Supreme Court as necessarily controlling in Railway Labor Act cases.

Given all the above, I find it is not at all sure that the Board would view a decision of a Federal court in a duty of fair representation lawsuit dealing with *Beck* rights and procedures, even under the National Labor Relations Act, as controlling Board Section 8 determinations or requiring reversal of existing contrary Board unfair labor practice case law. The Board has historically undertaken its own analysis and there may be differing standards under the duty of fair representation as applied by the courts and as applied by the Board. Such independent evaluation may well develop with respect to aspects of *Beck* rights and obligations including the establishment of particular procedural requirements such as notification obligations on the part of unions.

Board administrative law judges have long been admonished to follow Board decisions even in the face of contrary court of appeal holdings unless and until the Board holdings are reversed by the Board or the Supreme Court. The Board noted in *Waco*, Inc., 273 NLRB 746, 749 fn. 14 (1984):

> In his discussion of this issue, as elsewhere, the judge improperly relied on courts of appeals decisions instead of initially considering relevant Board decisions on the issues presented. . . . We emphasize that it is a judge's duty to apply established Board precedent which the Supreme Court has not reversed. *Iowa Beef Packers*, 144 NLRB 615, 616 (1963). It is for the Board, not the judge, to determine whether that precedent should be varied.

c. *Summary and conclusion*

The Supreme Court's decisions in *Hudson* and in other public sector cases address various procedural requirements for unions in protecting and preserving nonmember rights to object to the collection of fees for nonrepresentational expenditures. Certain decisions of the United States Circuit Courts of Appeals under the Railway Labor Act and in the public sector do the same. Initially the parties argued whether these cases, independent of the statutes under which they arose, supported the General Counsel and the Charging Parties' theory of a violation. A second issue was raised whether or not these decisions command and require a reversal of established Board precedent given the differing statutory and constitutional arguments made. Relying on the various doubts and ambiguities discussed above, I find that the issues were not so clearly resolvable in the General Counsel and Charging Parties' favor so as to conclude that existing Board law has been overruled.

In summary, I found it less than certain that *Hudson* requires union disclosure of the type at issue here. I also found conflicting authority respecting the applicability of *Hudson* and other public sector constitutional cases to cases arising under the National Labor Relations Act. I further found reasonable doubt whether, even were *Hudson*'s procedural requirements applicable to duty of fair representation lawsuits in the Federal courts respecting unions under jurisdiction of the Act, the Board would be bound to follow such a holding. Given all the above, and given that Board law on the issue of a union's disclosure of statutory rights to employees is well established, I find and conclude that I am duty bound to follow existing precedent on this narrow question.

I have concluded, supra, that current Board case law does not require unions under their duty of fair representation to disclose to employees any statutory, as opposed to contractual, rights the employees may have. I have also concluded that, although the Supreme Court's decision in *Beck* identifies a statutory right held by represented employees working under a union-security agreement which the Board has not as yet addressed, the Supreme Court has not reversed Board law respecting union disclosure of statutory rights. Absent such a reversal, I am bound to follow existing law. Accordingly,

applying existing Board law, I find Respondent Unions had **[290]**obligation to initiate disclosure of *Beck* rights or the Union's *Beck* procedures to employees.

(2) Did the Unions meet their duty to disclose

Having found that their is no duty on the part of Respondent Unions to inform unit members of their statutory *Beck* rights or of the procedures established by the Union respecting dues objection, I find Respondent Unions have not violated the Act as alleged in complaint paragraphs D,7. Accordingly I shall dismiss these allegations of the complaint save for that portion of complaint paragraph D,7(c) which deals with provision of rights rather than simple notification. That aspect of the complaint will be discussed, infra.

b. *Allegations Respondent Unions' policy requirements for employees to qualify as objectors are impermissibly restrictive*

Complaint paragraph D,7(c) in part alleges that Respondent Unions' policy improperly fails to provide unit members: (1) when they are hired and (2) new nonunion members upon their resignation from the Union, with an opportunity to apply to become dues objectors outside the annual January window period.[20] Complaint paragraph D,8(a) challenges Respondent

---

[20]The complaint language is somewhat ambiguous respecting whether the General Counsel is alleging the Union denies a newly hired employee an opportunity to become a dues objector. Addressing the allegation Respondent Unions note that its policy by its terms explicitly provides a new employee may perfect an objection "during the first 30 days in which an objector is required to pay fees to the union." Respondent Unions further assert there was no evidence offered nor argument made that Respondent Unions have not honored this policy provision. The General Counsel appears to agree with this factual recitation on brief and does not argue this broader reading of complaint par. D,7(c). I construe the complaint not to have been intended to have been so broadly read or, in the alternative were it necessary, I would dismiss this allegation of the complaint, insofar as it applies to newly hired unit members, as not supported by the evidence.

Union's policy of requiring potential objectors to submit their objections individually in separate envelopes and paragraph D,8(b) challenges Respondents' policy requirement that the objections be sent by certified mail.

(1) The Unions' restrictions on the time individuals may submit their objections—complaint paragraph D,7(c)

Respondent Unions' policy states in part:

> 2. Beginning on January 1 of each year and for the following 30 days, or during the first 30 days in which an objector is required to pay fees to the union, that objector may request that his/her monthly agency fee payment be reduced so that he/she is only bearing the costs of representational activities.

(a) *Arguments of the parties*

Respondent Unions' policy limits applications for dues objector status for all save newly hired employees to an annual January window period. The General Counsel notes that Respondent Unions place no time limits on union member resignations, therefore unit members may resign their union membership at any time during the year, yet remain subject to the union-security clause. If a union member resigns after the January window period for dues objection under Respondent Unions' policy has passed, such a new nonunion member must wait till the following January to perfect his or her dues objection. The General Counsel alleges this is an impermissible restriction on resignees' rights.

The General Counsel argues that the proper standard is that established in *Tierney v. City of Toledo*, 824 F.2d at 1503, wherein the court held that objection procedures:

> . . . must afford dissenting non-members a reasonable time to voice their objections and must not be framed so as to

discourage the exercise of their First Amendment rights by intimidation or the imposition of unrealistic and excessively complex procedural requirements.

The General Counsel disputes the Union's International Secretary-Treasurer Ducy's testimony that restrictions on filing dues objector status applications after January are necessary to avoid an accounting nightmare respecting the allocation of funds between the three levels of Grand, District, and Local Lodges and the difficulties of handling objector applications at different times in relation to the annual cost allocations and ensuing arbitration. Thus the General Counsel argues that new employee objector applications are received and processed throughout the year and the accounting and other administrative practices and procedures that are applied to such applications could be followed without seeming difficulty respecting applications from union resignees. Further, the General Counsel notes that on a few occasions Respondent Unions have recognized out of time objections filed by nonmembers without destroying its system of accounting or requiring multiple annual cost allocation audits or multiple arbitrations.

Respondent Unions do not dispute the fact that union members who resign on or after February first of a given year must wait until the following January window period to perfect objector status. Rather Respondent notes that union members are informed in the December Machinist of the January window period. Counsel for Respondent Unions adds on brief at 51:

> Accordingly, if a [union] member wishes to become a dues objector after reading that notice, all he or she need do is resign and seek objector status during the month of January. One letter is sufficient to accomplish both tasks. Tr. 312. Thus, every represented employee annually is given advance notice and one month period within which to resign and become an objector. [Footnote omitted.]

Respondent Unions argue further that the General Counsel's argument here is in reality an indirect attack on the window period concept. Thus, argue Respondent Unions, were the General Counsel to prevail, union members who are free to

resign their union membership at anytime could piggyback a dues objection application onto the resignation and avoid the window period limitations. In such a circumstance, since new employees, who are already exempt from the window period filing limitation, and union member resignees are the two categories of unit members most likely to file for dues objection status, the window period would apply to only **[291]**a small portion of dues objection applicants and become essentially meaningless.

Respondent Unions point out on brief at 51 that "the General Counsel concedes that a window period as a general matter is a reasonable and appropriate union rule in this context, see GC Mem. 88-14, p. 3." The Union adds on brief at 53:

> Unsurprisingly, courts and arbitrators have unanimously rejected challenges to similar window periods. See *Kidwell v. TCU*, 133 LRRM 2692, 2703 (D.Md.1990), affd. 946 F.2d 283 (4th Cir.1991); *Andrews v. Education Association of Cheshire*, 653 F.Supp. 1373 (D.Conn.1987), aff'd, 829 F.2d 335 (2nd Cir.1987). *Lenhardt v. Ferris Faculty Ass'n.*, 129 LRRM 2829, 2835 (W.D. MI 1988); *Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6th Cir.1987).

(b) *Analysis and conclusion*

In the absence of Board precedent on *Beck* issues, I have looked to analogous Board doctrine. With respect to temporal limitations on employees rights to invoke *Beck* objections, I find current Board law on temporal limitations to employee rights to resign from unions most similar. Like union resignation, the right to withhold payments for nonrepresentational activities is a Section 7 right. Since the Board now allows essentially no limitation on the time members may resign from a union, *Machinists Local 1414 (Neufeld Porsche Audi)*, 270 NLRB 1330 (1984), I start from that premise here. The General Counsels limited attack on Respondent's window period limitation is therefore persuasive under current law.

I am not persuaded by Respondent Unions' argument that allowing newly resigned former union members the right to invoke *Beck* rights outside the window period will make

accounting unnecessarily difficult. As the General Counsel argues, since newly hired employees may invoke the Union's policy outside the window period, Respondent Unions' accounting procedures must be set up to accommodate such employees' dues reduction applications at any time of the year. Union member resignees' applications therefore should present no insurmountable challenges to such a system. Nor am I persuaded by Respondent Unions' argument that allowing resignees to become objectors without time limit will, in effect, reduce the window period's restrictions to a very small proportion of applications.

The bulk of cases Respondent Unions cite as supporting the concept of a window period restriction on dues objector applications are primarily trial court holdings. The Unions also cite the following language in *Tierney*, supra, 824 F.2d at 2506:

> [W]e do not consider unreasonable the plan's provision that each member be required to object each year so long as the union continues to disclose what it must before objections are required to be made.

I do not find the quoted language rises to the level of effective support for Respondent Unions' arguments rejecting the General Counsel's limited attack on the window period here.

Given all the above, and in particular the Board's growing disfavor of impediments to union resignations, I find that Respondent Unions' policy restricting the time when union member resignees may invoke *Beck* rights to the month of January of each year is an overly broad restriction on employees' Section 7 rights to refrain from supporting their collective-bargaining representatives' nonrepresentational expenditures. I further find that such restrictions violate the Unions' duty of fair representation and therefore violate Section 8(b)(1)(A) of the Act. I therefore sustain the General Counsel's paragraph D,7(c) of the complaint.

(2) Requirements respecting the form of the dues objections application

Respondent Unions' policy states in part:

> 3. A request must be in the form of an individually sent letter, signed by the objector and sent to the General Secretary-Treasurer of the International Association of Machinists and Aerospace Workers, AFL–CIO, [Washington D.C. address omitted], by certified mail and postmarked during the 30-day period. . . . The request shall contain the objector's home address and local lodge number, if known.

The two portions of this policy limitation under attack by the General Counsel are discussed separately below.

(a) *The Unions' requirement that objector applications be sent by certified mail—complaint paragraph D.8(b)*

1. Argument of the parties

The General Counsel argues that restrictions of a union member's rights to resign are analogous to restrictions on unit members' right to seek dues objector status and that the case law applicable to the former should also apply to the latter. The General Counsel notes that the Board in *Auto Workers Local 148 (McDonnell Douglas)*, 296 NLRB 970 (1989), held that a union provision that union members submit their resignations by certified mail violated Section 8(b)(1)(A) of the Act. In *Weaver v. University of Cincinnati*, 942 F.2d 1039, 1046-1047 (6th Cir.1991), the General Counsel argues, the circuit court struck down a certified mail requirement for filing of a dues objection request in the public sector.

Counsel for Respondent Unions argues that since dues objection matters sometimes result in litigation "it is reasonable to require objectors to give notice through certified mail, so that there can be no issue concerning whether or not notice was received during the window period." (R.U.Br. at 54.) Counsel continues:

> Given that the Board itself requires that its General Counsel serve all papers by certified mail, see 29 CFR Sec. 102.113, its General Counsel cannot be heard to argue that such a requirement is irrational. [U.Br. at 54.]

2. Analysis and conclusion

Respondent Unions' arguments are not persuasive. Respondent Unions' professed desire to establish when a letter has been received is not enhanced by requiring the sender to use certified mail delivery. Since the use of certified mail could only benefit the sender, i.e., the dues objector appli–**[292]**cant, only that person should rationally determine if such form of mailing is desirable. Further, contrary to counsel's assertion, the Board's Rules and Regulations Section 102.113 essentially track the provisions of Section 11(4) of the Act which language provides for various means of service of Board papers and further provides an exception to the Hearsay Rule in Federal Rule of Evidence 802 for purposes of establishing proof of service of Board documents. These sections and the General Counsel's service practices under them are irrelevant to the allegation at hand.

I agree with the General Counsel that a requirement that an application be submitted by certified mail has no realistic value to the Union and is therefore a needless and impermissible impediment to the employees' exercise of *Beck* rights which are also Section 7 rights. The General Counsel's cited cases are on point. While the Sixth Circuit in *Weaver*, 942 F.2d at 1046-1047, found the certified mail requirement a "minor burden" it further found it impermissible because it was simply "unnecessary." A procedural impediment to the exercise of Section 7 rights even if "minor" which has no balancing utility to the union is clearly arbitrary and a violation of the unions' duty to fairly represent employees. Accordingly I sustain the General Counsel's complaint paragraph D,8(b) and find that Respondent Unions' requirement that dues objector applications be submitted by certified mail violates Section 8(b)(1)(A) of the Act.

(b) *The Unions' requirement that objector applications be submitted in separate envelopes—complaint paragraph D,8(a)*

1. Arguments of the parties

Respondent Unions' secretary-treasurer Ducy testified that Respondent Unions require that dues objector applications be submitted in individual envelopes in order to: (1) assure that the individuals filing objections sincerely intend to become dues objector and (2) discourage group solicitation as a means of undermining the Union. Respondent Unions argue that since dues objection is an individual right of conscience, it is not arbitrary or capricious for the Union to require a dues objection application to be in a form which (1) maximizes the likelihood of individual action based on conviction, (2) discourages ill considered group conduct induced for purposes of weakening the Union, and (3) reduces the likelihood of insincere or sham objections.

The General Counsel challenges the legal sufficiency of Respondent Unions' asserted justification for the individual envelope requirement. He notes on brief at 51:

> Although the Court in [*Machinists v.*] *Street*, 367 U.S. [740] at 774, established that the burden is upon the objector to make known his or her dissent, it is clear from [*Railway Clerks v.*] *Allen*, [373 U.S. 113 (1963)], that this burden is a minimal one. 373 U.S. at 119; See also [*AFT Local 1 v.*] *Hudson*, 475 U.S. [292 (1986)] at n. 16; *Grunwald v. San Bernardino School District*, 917 F.2d [1223 (9th Cir. 1990)], at 1229. For Respondents to require objecting employees to "jump through hoops" as it does here in order to assure it of the "sincerity" of an employees objection upsets the balance struck by the Supreme Court and impermissibly burdens an employee's exercise of his or her statutory rights. So long as an employee objects by signing his or her name to a letter sent to the appropriate union official, Respondent Unions' interest in accuracy and efficiency are adequately protected.

2. Analysis and conclusion

I rejected Respondent Unions' argument that it had a good and sufficient reason for requiring that objector application letters be sent certified mail. Rather, I found the requirement was of no objective benefit to the Union and was a real if not major

burden to the objector. Respondent Unions' argument in support of its requirement that applications be sent in individual envelopes admits, in effect, that the requirement is designed to place a burden on objectors and that the sole utility to the Union in requiring such an effort is to ensure that an employee's submission of a dues objection application is a considered act. The Union argues the requirement is designed to frustrate mass solicitations by ideological opponents designed to undermine the union in its dealings with employers generally as well as any particular employer in question and to ensure that employee invocations of *Beck* rights are undertaken in a deliberate and sincere way by employees exercising their own judgment and initiative.

Respondent Unions' fears are not necessarily groundless. The history of the Act and the experience gained in administering it over the years is not inconsistent with the general notion that opposition to trade unionism may take many forms. To the extent that a strong and confident union with a large proportion of employees as members may be more aggressive and successful in obtaining concessions from an employer, there is an incentive for an employer and its allies to undermine the union in anyway possible. The Board has held that employer solicitation of employee resignations from the union which represents them through the use of direct or implied threats or direct or implied promises of benefit is an unfair labor practice. See, e.g., *Erickson's Sentry of Bend*, 273 NLRB 63 (1984), and cases cited therein. To the extent that Respondent Unions note that "dues objection disputes are commonly fueled by the National Right to Work Committee," (R.U.Br. at 54), there is judicial recognition that this organization has been active in supporting dues objector applications. *Gilpin v. State County Employees*, 875 F.2d 1310 (7th Cir. 1989), cert. denied 493 U.S. 917 (1989).

The General Counsel's rejoinder, however, seems to be that, irrespective of the purported fears of the Union that employees will be easily cajoled into ill considered mass invocations of *Beck* sanctioned dues objections, the degree of thought given by the employees to their decisions to become dues objectors or the reasons that the employees have chosen to file dues objection applications—absent unfair labor practice conduct not here relevant—is simply not any of the Unions' business.

I agree with the General Counsel that Respondent Unions may not justify their admitted complicating of the dues application process by asserting either a need to test employees' sincerity or a need to protect against the herding of employees by ideological opponents such as the National Right to Work Committee. An employee's action in submitting a dues objector application is the exercise of Section 7 rights as is the act of resignation from a union. Such employee exercises **[293]**of statutory rights are not susceptible to "testing" either by unions or employers for their sincerity or conviction.[21]

All voluntary, uncoerced employee Section 7 conduct, including the filing of a dues objection application, even if arguably insufficiently considered or undertaken in haste or as a result of a "group solicitation of objections as a way to undermine the Union," (R.U.Br. at 54), must be accepted by Respondent Unions without additional procedural restriction or impediment designed to root out such applications.

These principles are not new to Board decisional law. The Board does not attempt to prevent unions or employers from pointing out options available to employees so long as those actions and communications are free from coercion or improper inducement. Thus the Board has held that employers may send unsolicited notifications to their employees describing window periods for union resignation. Such employer communications may even include prepared letters of resignation for signature by employees and envelopes for their transmission to the union. *Perkins Machine Co.*, 141 NLRB 697 (1963). Resignations or other employee actions stimulated by such employer conduct, including a dues objection application, would not be invalid as a result of the employer's action.

Based on all the above, and in agreement with the General Counsel, I find the policy requirement of a single envelope for each dues objection application is an impermissible restriction

---

[21]That is not to say that a union may not file a charge with the Board alleging a particular employee act, be it union resignation or dues objection, is fatally tainted by employer compulsion in violation of the Act. What is held invalid here is the screening or testing of employee conduct through the creation of procedural requirements which make the act of filing a dues objection application more difficult.

on employees' *Beck* rights. Inasmuch as the sole justification of the requirement of a separate envelope for each application is a testing of the quality of the potential objector's exercise of Section 7 rights, the requirement is arbitrary and inconsistent with Respondent Unions' duty to fairly represent employees. Respondent Unions' restriction therefore violates Section 8(b)(1)(A) of the Act. Accordingly, I sustain paragraph D,8(a) of the General Counsel's complaint.

c. *Allegations attacking Respondent Unions' method of ascertaining and allocating objector's fees under Beck—complaint paragraph D,10*

Most of the General Counsel's "national allegations" set forth in section D of the complaint deal with procedures and disclosure of information. Only paragraph D,10 alleges that Respondent Unions are improperly charging dues objectors for nonrepresentational expenses. That paragraph of the complaint is discussed below in separate sections dealing with different aspects of the contention.

(1) The Unions' obligation to allocate representational expenditures on a bargaining unit by bargaining unit basis

As noted, supra, Respondent International has an annual determination made of the International's representational and nonrepresentational expenses. District and Local Lodge allocations are made initially on the basis of a survey of selected Lodges. Where a challenge has been filed, the challenger's specific District and Local Lodge is audited. At no time are individual bargaining units audited for this purpose. There is therefore no dispute that Respondent does not break down or allocate expenses or adjust dues objector's fees on a unit by unit basis. Paragraph D,10 of the complaint alleges in part that the charging of expenses for representational expenses "not attributable to Respondent Unions' representation of the objecting nonmembers bargaining unit" violates Section 8(b)(1)(A) of the Act.

The General Counsel predicates his argument that individual bargaining units are the required financial unit with respect

to which representational expense allocations must be made by citing the Supreme Court's decision in *Ellis v. Railway Clerks*, 466 U.S. 435 (1984) (*Ellis*). The General Counsel points out that the Court in addressing and discussing what are termed *Beck* rights here referred to "the bargaining unit," "the relevant unit," and the "collective bargaining unit" (id. at 447-488, 488, and 452), rather than to the union as a whole in discussing expense allocation.

The General Counsel argues from this focus of the Court in his brief at 66:

> Accordingly, in the Court's view, a union's obligations under the RLA take their meaning from the union's relationship to the unit and must be defined in terms of that unit, and therefore the union can only charge objecting nonmembers for representational expenses expended for that unit.

The General Counsel argues that the Court in *Communications Workers v. Beck* relied on *Ellis*, 487 U.S. 735, 752 (1988), and therefore carried this standard to cases under the National Labor Relations Act.

Respondent Unions argue vigorously that the General Counsel's reliance on unfocused language in the earlier Supreme Court cases is at best weak reasoning and, in any event, falls to the recent specific holdings of the Federal courts and the Supreme Court on the issue. Thus, Respondent Unions argue the Fourth Circuit in *Crawford v. Air Line Pilots*, 870 F.2d 155, 158-159 (4th Cir. 1989), authorized national rather than unit-by-unit expense calculation under the Railway Labor Act. He argues further the Tenth Circuit in *Pilots Against Illegal Dues v. Air Line Pilots*, 938 F.2d 1123 (10th Cir. 1991) (PAID), reached the same conclusion.

A key case on the issue is the May 30, 1991 decision of the Supreme Court, *Lehnert v. Ferris Faculty Assn.*, 111 S.Ct.1950 (1991) (*Lehnert*). In that case the Court, addressing *Beck* issues in the public sector, allowed allocation of extra unit expenditures—that is expenses calculated on a larger than unit- by-unit basis including expenses not directly of benefit to the objector's particular unit—as representational expenses to members of

particular bargaining units who did not receive immediate or direct benefit. 111 S.Ct. at 1961.

The General Counsel in a learned analysis seeks to distinguish the holdings in these cases both on their facts and by a meticulous analysis of the various opinions expressed by the justices in *Lehnert*. I am not persuaded however by his arguments. These cases, including *PAID* which relied on *Lehnert* in reaching its result, convince me that the Supreme Court allows agglomeration and averaging to determine a single nationwide cost allocation to apply to all collective-**[294]**bargaining units represented by the union. Since I have determined, supra, that it may be fairly concluded that the standards under *Beck* and the National Labor Relations Act are at least no more rigorous than those established by the courts for the public sector unions and unions under the Railway Labor Act, I further conclude this same license is appropriate under the Act.

Accordingly, I find there is no breech of a union's duty of fair representation as enforced by the Board under Sections 7 and 8 of the Act, when a union calculates *Beck* dues allocations on other than a bargaining unit by bargaining unit basis, setting aside the issue of litigation expenses discussed, infra. Respondent Unions have therefore not violated the Act and this portion of complaint paragraph D,10 shall be dismissed.

(2) The issue of extra unit litigation expenses

The General Counsel argues on brief at 72:

> Assuming arguendo that it is held that the Act does not require a unit-by-unit accounting of Respondent IAM's expenditures, the holding in *Ellis* that "the expenses of litigation not having a connection with the bargaining unit are not to be charged to objecting employees" suggests a finding of a violation to the extent that Respondent IAM charges all objectors the same proportion of its litigation expenses without regard to whether it affects their particular bargaining unit [467 U.S. at 453, remainder of footnote omitted]. Thus, the litigation schedules in evidence establish that objectors who are charging parties here have been

charged for litigation engaged in by Respondent IAM on behalf of other bargaining units.

Respondent Unions with the annual approval of the arbitrators in the objector challenge arbitrations do not charge fee objectors for certain litigation expenses determined not related to the negotiation or administration of collective-bargaining agreements. Objectors were charged a proportionate share—not on a unit-by-unit basis—of litigation determined to be related to the Union's representational role. Respondent Unions on brief note that both they and the arbitrator specifically had *Ellis* and its distinctions in mind in establishing the allocation at issue. In a learned analysis counsel for Respondent Union relies on the partial dissent of Justice Kennedy in *Lehnert*, supra 111 S.Ct. at 1982, noting that *Ellis* did not discuss whether a local bargaining unit might choose to fund litigation incident to its representational role through cost sharing arrangements with affiliates.

At the threshold, I do not accept either Respondent Unions' assertion that its audit protocol or the arbitrators' decisions are consistent with *Ellis*. *Ellis* is unambiguous that there are potentially qualifying and nonqualifying representational expenses, but that in all events the bargaining unit(s) involved in the litigation must be the sole bearer(s) of qualifying expenses. Respondent Unions' counsel's arguments on *Ellis* seem to me to attempt to show that its holding that even representational litigation expenses must be allocated on a unit-by-unit basis is not persuasive, may be distinguished on closer consideration of the underlying facts, or does not encompass the allocations of expenses made by the Union. I do not agree. I am not persuaded that *Ellis* permits any extra bargaining unit proration of litigation expenses among units under the Railway Labor Act. Nor do I consider Respondent Unions' arguments in effect suggesting that *Ellis* is wrong. I need not agree with or be persuaded by the logic of a current decision of the Supreme Court. I am duty bound to apply all such holdings wherever applicable.

Nor do I find that *Lehnert's* approval of expense pooling justifies the Union's conduct here. Counsel for Respondents' reliance on the dissenting views of Justice Kennedy in Lehnert on the intentions of the Court in *Ellis* serve more to identify the

propositions counsel asserts as those of the dissent rather than to persuasively demonstrate that the Court did not mean what its language seems clearly to indicate.

The parties have argued and I have addressed the issue of the applicability of non-National Labor Relations Act holdings, supra. Consistent with my intentions expressed there, in the absence of even analogous Board law, I shall apply the Court's decisions under other statutes where they address related circumstances unless and until the Board has spoken on the issue.

Applying that standard here, since the Unions' allocation of litigation expenses was not undertaken on a bargaining unit by bargaining unit basis, the litigation expenses may not be charged to any objectors. Inasmuch as there is no dispute certain litigation expenses were charged to dues objectors, those charges were improper and violated Section 8(b)(1)(A) of the Act. Thus paragraph D,10 is sustained as to extra unit litigation expenses.

Since there is no question that Respondent Unions have never broken down litigation expenses on a unit-by-unit basis, yet have collected fees predicated on such expenses from objectors, the General Counsel's complaint paragraph D,9(b) is also sustained. Thus, I hold here, if Respondent Union seeks to collect for bargaining unit litigation expenses, it must break down those expenses on a unit basis to establish the expense as a representational expense for a particular unit member dues objector. If such expenses are not to be charged to unit members, then there is no obligation to break such expenses down on a unit-by-unit basis. Respondent Union may not, however, have the one without the other.

(3) The charging of objectors for legislative expenses

Paragraph D,10 alleges in part that Respondent Unions improperly charged objectors for legislative expenses. Respondent Unions on brief concedes that it has improperly charged objectors for certain legislative expenses which it concedes are not properly attributed to representational activities. That portion of complaint paragraph D,10 alleging improper collections for legislative expenditures, and other complaint paragraphs incorporating this portion of the allegation in complaint para-

graph D,10, infra, will therefore be sustained based on that admission without further analysis. Respondent Unions' arguments respecting the determination of the quantum of misallocations will be deferred to the compliance stage of these proceedings as appropriate.

d. *Allegations attacking the sufficiency of information provided to dues objectors—complaint paragraph D,9*

Complaint paragraph D,9(a) alleges that Respondent Unions have failed to provide dues objectors with sufficient **[295]**information to fully challenge Respondent Unions' allocation calculations by

> failing to timely provide a breakdown of expenditures by the objecting employee's District and Local Union into chargeable and non-chargeable categories by failing to disclose Respondent International's survey of District and Local Lodge expenditures upon which Respondent International bases its advance reduction of the portion of dues collected which are owed to the District and Local Unions.

Complaint paragraph D,9(b) alleges Respondent Unions failed to provide dues objectors who may be considering challenging the Union's dues allocation with a breakdown of expenses for representational activities on a unit-by-unit basis.[22] Complaint paragraph D,9(c) alleges Respondent Union has failed "to include and breakdown initiation fees charged to non-members into representational activities and non-representational activities on a unit-by- unit basis."

Complaint paragraph D,9(d) alleges that Respondent Unions failed to "explain why its classifications of various expenditures including, inter alia, 'Human Rights,' 'Community Services,' and 'Special Projects,' are chargeable as representational activities." Paragraph D,11 contends that Respondent Unions

---

[22] The special situation pertaining to litigation expenses has been discussed, supra.

"have failed to provide[23] an independent audit of District and Local Unions' expenditures and allocations."

Respondent Unions' policy states in part:

> 4. Upon receiving a proper request from an objector, the General Secretary- Treasurer shall notify such objector in sufficient detail the amount by which his or her payments shall be reduced and provide a summary of major categories of expenditures showing how it was calculated.
>
> 5. Upon receiving the Secretary-Treasurer's notice of the current year's calculation of chargeable expenses, an objector shall have 30 days to file a challenge with the Secretary-Treasurer if he or she has reason to believe that the calculation of chargeable activities is incorrect.
>
> 6. If an objector chooses to challenge the calculation of the advance reduction, there shall be an expeditious appeal before an impartial arbitrator . . . (a.) Any and all appeals shall be consolidated.

Under the policy therefore, there are three different stages of employee involvement in the *Beck* process. Thus, there are employees who have expressed no opinion whatsoever respecting their *Beck* rights. Second, there are employees who have submitted a timely application and become dues objectors but have not filed challenges to Respondent Unions' calculation of the current year's chargeable expenses. Third, and finally, are the employees who are dues objectors who have filed a challenge to the Union's calculation of the advance fee reduction.

The various allegations are addressed below.

(1) Respondent Unions' failure to disclose Respondent International's survey of District and Local Lodge expenditures to dues objectors—complaint paragraph D,9(a)

---

[23]This paragraph of the complaint singularly fails to indicate to whom Respondent Unions are alleged to have failed to provide the independent audits. Presumably, like the matters alleged in par. D,9, the audits are to be provided to perfected dues objectors who are potential challengers or perhaps to challengers in preparation for a challenge arbitration.

In 1988 and 1989 objectors did not receive a copy of Respondent Unions' survey of District and Local Lodge expenditures which formed the basis for reductions in the dues allocated to District and Local Lodges unless they filed a challenge under the policy quoted above. Those dues objectors who filed challenges ultimately received those breakdowns. Since 1990 the summary pages of the District and Local expenditure audits have been included in the information supplied as described in policy subsection 5 quoted, supra.

The General Counsel on brief argues that Respondent Unions' 1990, 1991, and subsequent disclosures of the District and Local Lodge expenditures to dues objectors are inadequate for two reasons. First, the General Counsel argues the Union does not provide independently audited statements. That argument will be discussed, infra, in considering complaint paragraph D,11.

The General Counsel next argues on brief at 57:

> Second, the summary sheets do not contain enough explanation regarding those categories which are deemed only partially chargeable for the objector to determine the basis for that determination. Neither the supporting schedules referred to on the summary sheet, nor Respondent IAM's audit protocol on which it relies to determine chargeability, are included. Either would provide sufficient information to allow an objector to determine whether to accept Respondent's advance reduction or seek more detailed information through the filing of a challenge. By failing to provide such information, however, Respondent Unions have violated Section 8(b)(1)(A) of the Act.

This argument will also be discussed, infra, respecting complaint paragraph D,9(d) at page 55, infra.

I agree with the General Counsel that the Union's omission to supply information to objectors regarding its procedures for determining District and Local Lodge representational expenses until later in 1990 was improper and violated its duty to disclose. To this extent complaint paragraph D,9(a) is sustained. Given the other violations found and the remedy directed, infra, I do not

find an independent remedy is necessary regarding this violation of the Act.

I do not agree with the General Counsel that the Unions' disclosures from 1990 to date of the District and Local audit summary pages to objectors is inadequate. I base this determination largely on the analysis which follows dealing with the remaining allegations of complaint paragraph D,9 immediately following, particularly the language of *Gilpin v. State County Employees, AFSCME*, 875 F.2d 1310, 1315 (7th Cir.1989), quoted infra. Accordingly, I find the remainder of complaint paragraph D,9(a), not found violative, supra, without merit.

[296](2) Respondent Unions' failure to break down expenses for representational expenses on a unit-by-unit basis—complaint paragraph D,9(b)

I have considered and rejected that part of the General Counsel's complaint paragraph D,10 which alleges a failure to allot representational and nonrepresentational expenses on a unit-by-unit basis. I have rejected that contention, supra, save for litigation expenses. Having rejected the obligation to so allot expenses, I also reject the General Counsel's corollary allegation that Respondent Unions' must break down and disclose such a unit-by-unit allocation to dues objectors. This portion of complaint paragraph D,9(b), save for litigation expenses discussed, supra, will therefore be dismissed.

As noted supra, Respondent Unions must either not collect at all for litigation expenses or must supply a unit-by-unit breakdown of litigation expenses sufficient to make it clear that any litigation expenses charged to the objector was of direct benefit to that objector's bargaining unit. Respondent Unions' failure to provide such information while collecting expenses attributed to litigation violates Section 8(b)(1)(A) of the Act.

(3) Respondent Unions' failure to break down initiation fees charged to nonmembers into representational activities and nonrepresentational activities and on a

unit-by-unit basis—complaint paragraph D,9(c)[24]

The relevant union-security clauses in Respondent Unions' contracts obligate unit employees to pay periodic dues and an initiation fee. Respondent Unions regularly collect such fees. Initiation fees, which are revenues for Respondent Unions, are distributed among the Grand, District, and Local Lodges. There is no record evidence as to how revenues are recorded within the accounting systems of the International and its District and Local Lodges. Presumably initiation fees ultimately become simply an undifferentiated portion of revenues. Specific expenses associated with the Unions' entering a new member on the books are simply entered into appropriate expenditure categories within each organizational subunit incurring the given expenses. Record evidence of the 1989 figures in the fee reduction audit suggest no separate expense category specifically related to initiations is maintained.

Respondent Unions' policy addresses periodic dues only and does not refer to initiation fees. By omission it leaves the fair impression that initiation fees are not eligible for reduction under any circumstances. Nor does the record reflect what, if any, information dues objectors receive respecting initiation fees from Respondent Unions in other ways. It is clear that initiation fees have never been reduced as a result of *Beck* requests or dues objection applications by dues objectors. Insofar as the record reflects, initiation fees have never been referred to by the independent auditor in his annual report or by any arbitrator in the annual arbitrations.[25]

---

[24]The unit-by-unit portion of the complaint allegation has been dealt with, supra. That analysis will not be repeated here. That portion of this complaint allegation is also without merit.

[25]Thus the 1990 independent auditor's report determined the ratio of chargeable expenditures to total expenditures of Respondent Union was 86.05- percent chargeable. Dues objectors were thus the beneficiaries of a 13.95- percent dues reduction. Initiation fees were not considered nor discounted in either the independent auditor's report or the subsequent arbitration. Jt.Exh. 30 makes it clear that at least one Local of Respondent Unions informed employees that initiation fees were due from all new

The General Counsel argues that revenues collected under the compulsion of the union-security clause are all subject to *Beck* procedures and, therefore, the Unions must reduce initiation fees in the same manner it reduces dues payments for objectors. Counsel for the General Counsel admits on brief that he has uncovered no case law under any statute which has addressed initiation fees in a *Beck* context. He notes however that Section 8(a)(3) of the Act refers to both periodic dues and initiation fees without distinction and that each are collected by Respondent Unions from unit members under union-security clauses. There is no reason, in the General Counsel's view, that initiation fees should be viewed as somehow different and thus exempt from the holdings of *Beck* and related cases.

Respondent Unions' arguments on this issue are brief:

> The General Counsel alleges in paragraph D,9(c) that the Unions failed to provide information to new hire objectors breaking down their initiation fees into chargeable and nonchargeable percentages. Such notice to new hires under the IAM procedures would be provided by the local unions. (Jt.Exh. 1, par. 10.) There is no record evidence concerning the local unions' practices on this point, so the allegation must fail for want of proof. There are, moreover, no charging parties who filed timely charges asserting that they filed an objection and were not informed of their right to pay a reduced initiation fee, or that the Unions otherwise failed to provide adequate information to new unit members who filed objections. See *Nickles Bakery*, [296 NLRB 927 (1989)]. Thus there is no occasion for the Administrative Law Judge to rule on this hypothetical question even if the General Counsel had bothered to introduce evidence on the question [U.Br. at 60-61].

The defense that the charges are inadequate to support the national allegations of section D of the complaint was considered, supra, and has been resolved against Respondent Unions.

---

employees who had never before paid an initiation fee to the Unions whether or not they chose to be members or agency fee payers.

Further, I find that the record evidence of the policy,[26] the independent auditor's reports and the arbitrator's decisions meet the General Counsel's burden of proof of establishing that Respondent Unions do not and have not at relevant times applied *Beck* dues objector fee reduction procedures to initiation fees. There is also evidence that some Charging Parties did not specifically limit their various requests for fee reductions to requests that only their periodic dues be reduced,[27] but the requests in evidence were not made by objectors at a time when their initiation fees were yet to be paid. Of the 900-odd objectors in 1990 it may fairly be assumed that one or more objected under *Beck* at the **[297]**onset of employment, i.e., at a time when initiation fees were susceptible to discount.

Given the state of the evidence, the burden of going forward was on Respondent Unions to adduce evidence respecting additional actions Respondent Unions' organizational subunits may have taken respecting initiation fees. Accordingly, and contrary to Respondent Unions' contention, I find the General Counsel has sustained his factual contentions here.

The underlying legal assumption the General Counsel relies on respecting this allegation is that initiation fees are properly treated exactly the same way periodic dues are under *Beck*. I agree for several reasons. First, under current Board law respecting collection of dues and initiations fees, no distinction is made between initiation fees and dues.

Second, the whole logic of the Supreme Court's evolution of *Beck* rights both earlier under the Railway Labor Act and more recently under the National Labor Relations Act and the public sector statutes is to establish a means for employees to limit their support of the union to payment of moneys limited to an amount necessary to recompense the union for representational expenditures. Such an analysis admits no logical distinc-

---

[26]The policy's terms are clearly addressed only to unit members periodic dues obligations and does not address or provide a means of reducing initiation fees.

[27]See for example, Mark V. Bluteau's June 5, 1990 letter to the Union objecting "to the use of the monies which you collect from me for purposes other than. . . ." (Jt.Exh. E,3.)

tions between the title, form or periodicity compelled payments. The principles involved in the cases deal with reconciling amounts paid by objectors and qualifying expenses incurred by the union. Such an expenditure standard leaves no room for excluding initiation fees from the procedures which all agree must be applied to periodic dues or fees. I find therefore that *Beck* encompasses all moneys collected by a union under the compulsion of a union-security clause without distinction. I further find that *Beck* rights apply to initiation fees as well as periodic dues.

Given that *Beck* applies to initiation fees, Respondent Unions were obligated to provide in its policy for the refund of initiation fees on the same basis as periodic dues. Thus it was required to use the same expense allocation formula applied to discount an objector's monthly fee obligation to also discount initiation fees. In the alternative Respondent Unions could provide an independent formula for the refund of nonrepresentational expenses associated with initiation fees.[28]

The General Counsel's complaint allegation, paragraph D, 9(b), does not allege a failure on the part of Respondent Unions to discount or rebate to objectors the portion of their initiation fees not chargeable to representational activities. Nor does any other portion of the complaint so contend. Rather the General Counsel limits his contention to the narrow allegation that the Union failed to supply objectors with sufficient information to challenge the Union's calculations by failing to break down initiation fees into representational and nonrepresentational expenses.

In my view the General Counsel's complaint allegation confuses both accounting principles and the Unions' current practices. Under *Beck*, expenses are allocated into representational and nonrepresentational categories and the ratio of the two is used to reduce the fees charged objectors. In calculating the

---

[28]If such a procedure is established the expense allocation for periodic dues could not include initiation expenses. Initiation expenses would have to be separately maintained to avoid double counting. In the instant case however no attempt was made to apply *Beck* to initiation fees and therefore it is unnecessary to consider what independent treatment might be sufficient under *Beck*.

reduced dues formula, fees are not broken down, only expenses are. It would seem that the General Counsel intended to allege that Respondent Unions have failed to "determine the chargeable portion of initiation fees and to disclose this information to objectors" (taken from a portion of the General Counsel's argument on brief at 58).

Viewing the complaint allegation in this fashion, I find that Respondent Unions have in fact made appropriate calculations. Respondent Unions have chosen, in allocating all its expenses in a single calculation into representational and nonrepresentational portions, not to treat expenses associated with initiation procedures separately from other expenses. Respondent Unions have calculated and applied a single universal fee reduction formula at each organizational level, i.e., Grand, District, and Local Lodges. Therefore Respondent Unions is bound to apply the same reduction formulae used to reduce objector's monthly agency fees to reduce initiation fees of all objectors who have submitted a timely objection. The reducing fraction of representational expenses over total expenses which is used to discount the objector's contributions to the Grand, District, and Local Lodge portions of his monthly agency fees for any given year are also the figures or "breakdowns" the General Counsel's complaint alleges are not provided to objectors so that they may challenge the Unions' calculations.

Under this analysis however, Respondent Unions have failed to indicate to objectors that the dues reduction formulae calculated each year also applied to initiation fees. Respondent Unions' consistent failure to do this in its policy, in its disclosures to objectors, in the independent auditor's reports, the arbitration proceedings, or in any other manner whatsoever sustains the General Counsel's complaint paragraph D,9(c) even as so ambiguously pleaded. Thus I find that by failing to inform objectors of the applicability of its annual dues reduction calculations to initiation fees as well as periodic fees, Respondent Unions have violated Section 8(b)(1)(A) of the Act.

(4) Respondent Unions' failure to explain to dues objectors, who are considering challenging the Unions' expense allocation, the rationale for classifying as representational or nonrepresentational certain

expenditure classifications within its accounting system—complaint paragraph D,9(d)

(a) *The argument of the parties*

As noted supra, perfected objectors receive various information from Respondent Unions' including a disclosure of expenses which are classified as representational, i.e., chargeable, and nonrepresentational,i.e., not chargeable. Several categories of expenses disclosed are deemed partially chargeable, but are not further explained. The General Counsel alleges that several of these categories: human rights, community services, and special projects are ambiguous. The General Counsel argues on brief at 60:

> In most cases, a listing of the major categories of expenses, the amounts spent on each category, and the proportion of each category the union considers chargeable will be sufficient because the basis for the union's decision will be apparent from the description of the category. However, where the category itself is ambigu–**[298]**ous, then some description of the representational aspects comprising the category and some support for the union's determination that the activity is chargeable is required. The most obvious example of such a category would be one labelled "miscellaneous." The categories utilized by Respondent Unions here are no less ambiguous and provide a basis for an objector to decide whether to challenge the Respondent Union's determination. Accordingly, Respondents' failure to explain the chargeability of these ambiguous categories violates Section 8(b)(1)(A).

Respondent Unions respond that even under the "more exacting First Amendment standards" of *Hudson*, unions "need not provide non-members with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses," 475 U.S. at 307 fn. 18. Union counsel quotes *Dashiell v. Montgomery County, M.D.*, 925 F.2d 750, 756 (4th Cir.1991):

> The test of adequacy of the initial explanation to be provided by the union is not whether the information supplied is sufficient to enable the employee to determine in any final sense whether the union's proposed fee is a correct one, but only whether the information is sufficient to enable the employee to decide whether to object. If the employee objects, then the union will be called upon to demonstrate more completely its justification for the fee because, "[t]he burden of proof in establishing the charges validity chargeable rests . . . on defendant Union." [Citation omitted.]

Finally Respondent Unions rely on *Gilpin v. State County Employees*, AFSCME, 875 F.2d at 1315:

> Since to file a challenge costs only [postage], plus a small amount of time to supply the amount of information that the challenge must set forth, one would not have thought a challenger needed a detailed prospectus . . . before filing.

(b) *Analysis and conclusions*

The General Counsel's argument that accounting categories which contain both qualifying and nonqualifying expenditures require additional disclosure to render them intelligible to objectors must be set in a factual context. There is no doubt that manipulation of accounting categories may not be used by a union to render its accounts meaningless to potential dues challengers. Using the General Counsel's example, were a "miscellaneous" category to loom so large in the accounts so as to be, in effect, the tail that wagged the dog, greater disclosure would clearly be required. So, too, if there were evidence of bad faith in cloaking accounts by a union, greater disclosure would be required.

The General Counsel does not contend that Respondent Unions were acting in bad faith in creating the accounting categories at issue here. Nor do the proportion of expenses contained in the challenged categories appear to be unreasonably large in the context of the Union's accounting scheme. The issue here therefore is a farther reaching contention of the General Counsel, i.e., that categories of account must either be essentially

self-evident from their labeling or be entirely classified as representational and nonrepresentational expenses. If not, argues the General Counsel, greater disclosure is required. In other words, "mixed" accounting categories must be further explained to provide the rationale for such mixed allocations.

This argument was directly addressed in *Dashiell v. Montgomery County,* supra, 925 F.2d at 758:

> Undoubtedly the nonunion employees received less information on "mixed categories" than they did where an entire category was charged or excluded, because in the latter situation the category description provides the distinguishing information. In a mixed category circumstance, the employees cannot, by the description alone, know what is the basis of the distinction between chargeable and nonchargeable expenses. The alternative, however, of providing to employees all the backup data and worksheets reflecting the judgment of the Union is impractical and addresses concerns that are beyond those which are relevant at this stage of the process.

I find the rationale of the court here logical and persuasive, irrespective of the weight to be given the decision as arising under a public sector statute. Given this determination, I find that Respondent Unions were not obligated to further disclose the basis of expenditure allocation within expense categories. The General Counsel's allegation is therefore without merit and complaint paragraph D,9(d) will be dismissed. This analysis also applies to complaint paragraph D,9(a) discussed, supra.

(5) Allegation that Respondent Unions have failed to provide an independent audit of Districts' and Local Union's expenditures and allocations—complaint paragraph D,11

(a) *Arguments of the parties*

There is no doubt that Respondent Unions' survey of District and Local Lodges' expenses as well as the subsequent audits of challengers' District and Local Lodges are undertaken

by employees of the International. While these employees are experienced trade union agents and have accounting training, they are not certified public accounts. The General Counsel contends independent certified public accountants must conduct these audits[29] under *Beck*. Respondent Unions disagree.

The General Counsel's argument is primarily grounded on *Hudson* which requires a union to provide "verification by an independent auditor," 475 U.S. at 307 fn. 18. Counsel for the General Counsel argues from that holding, on brief at 60-61:

> Courts which have construed this requirement have invariably held that the purpose of the independent audit is to ensure that the expenditures which the union claims it made for certain expenses were in fact made for those expenses. *Andrews v. Cheshire Education Association*, 829 F.2d 335, 340 (2nd Cir.1987); *Tierney v. City of Toledo*, 917 F.2d 927 (6th Cir.1990); **[299]***Dashiell v. Montgomery County*, 925 F.2d 750, 755 (1991).

Counsel for Respondent Unions argues initially, as has been set forth in detail supra, that *Hudson* and other "First Amendment" or constitutional public sector decisions are not controlling precedent for cases under the National Labor Relations Act. The General Counsel and the Charging Parties disagree. It is unnecessary to recite that scholarly debate a second time here.

Counsel for Respondent Unions argues further on brief at 27-30, that in considering what was to become the Labor Management Reporting and Disclosure Act of 1959, Congress specifically considered and rejected imposing an independent certified public accountant requirement for local or International union's preparation of financial accounts and ultimately allowed unions to generate required reports internally, without the assistance of outside auditors. See 29 U.S.C. § 431(b). Counsel argues further that the Supreme Court in *Machinists v. Street*, 367 U.S. at 733 fn. 22, specifically referred to the Labor Management Reporting and Disclosure Act and the duty of labor

---

[29]The audits of the International's books of account are undertaken by independent certified public accountants and are not at issue here.

organizations to file financial reports under that Act as a basis for crafting the disclosure requirements contained therein.

Respondent Unions also attack the practicality of the General Counsels' argued auditor requirement in three ways. First, they argue the cost would be crippling. Second, they note that no defect was either alleged or revealed in the current procedures which would be avoided by use of outside certified public accounting auditors. Third, they argue there has been no showing that the skills of certified public accountants are needed for the tasks at issue.

As noted, supra, Respondent Unions have some 6500 to 8000 bargaining units and over 1400 District and Local Lodges. Were the General Counsel to prevail in his argument that each unit must be independently audited by certified public accountants, argue Respondent Unions, the costs would be simply astronomical. Even were the current auditing pattern maintained, the cost of auditing each challenger's Local and District Lodge

> would dwarf the amount of fees the locals collect from dissenters. Thus the practical effect of the General Counsel's suggestion would be that the local unions simply would have to forgo collecting fees for local union expenditures. Unions would by law be required to allow free-riding on precisely that portion of union expenditures that most directly relates to collective-bargaining services for unit members. [U.Br. at 32.]

Respondent Unions argue that no suggestion has been made that the audits of the Union have been other than honestly and capably prepared and that the General Counsel specifically disclaimed any challenge to the competency of the auditors. Thus, the General Counsel, like Caesar in the famous apothegm addressing his wife, does not suggest a lack of virtue respecting the International's auditors, yet demands that they must be replaced in order that the virtue of the process be above suspicion.

Respondent Unions point out that *Hudson* does not require a certified public accountant perform any task associated with *Beck* audits, nor did the General Counsel adduce any evidence

that a certified public accountant certificate would provide any skill which the current audit staff lacks.[30]

Dealing with the issue of independence, Respondent Unions note that staff auditors are employees of Respondent. International and not of the affiliated Local and District Lodges. Further they argue that auditing assignments are made so that former employees of affiliates do not audit those affiliates. While it is clear that, as employees of Respondent International, its current auditors have a relationship of some degree with the District and Local Lodges they audit, such a removed relationship should not, in the Unions' view, disable their efforts where no attack on the accuracy or fairness of their work has been made.

(b) *Analysis and conclusions*

The arguments of the parties respecting this allegation of the complaint are notably lacking in citation to Board authority. As noted supra as to other aspects of *Beck* rights, there are roughly analogous circumstances in current Board law upon which to draw for inferences respecting how the Board will treat the instant allegation.

The Board holds that a union operating a hiring hall may not charge nonmembers a fee in excess of the cost of performing such services. *J.J. Hagerty, Inc.*, 153 NLRB 633 (1962), enfd. sub nom. *NLRB v. Operating Engineers* Local 138, 385 F.2d 874 (2d Cir.1967), cert. denied 391 U.S. 1375 (1968). In that case expenses unrelated to the union's bargaining and hiring hall activities including litigation expenses, etc., were disallowed as chargeable expenses.

In *Stage Employees IATSE Local 640 (Associated Independent Theater Co.)*, 185 NLRB 552 (1970), the Board again addressed hiring hall fees for nonmembers. The Board found that the union's assessment of referral fees was not in excess of the cost of the services provided. In reaching this conclusion the Board relied on "the Union accountant's less-than-rigorous figures," 185 NLRB at 559, to conclude that the evidence did not

---

[30] *Dashiell v. Montgomery County, M.D.*, 925 F.2d 750, and the cases cited here, provide a good discussion of the skills necessary in allocating expenses and the views of the Court concerning them under *Hudson*.

support a finding that the union's assessment system was violative of the Act.

These cases demonstrate in my view that the Board has not been zealous in requiring the most rigorous accounting standards even in situations where, as in certain *Beck* procedures, union expenditures are to be analyzed and divided into qualifying and nonqualifying categories and the union bears the burden of establishing the accuracy of the figures.

Turning to the first contention of the General Counsel in the instant case, that *Beck* audits must be conducted by certified public accountants, I find the Government's case is not persuasive. As Respondent Unions have pointed out, neither *Hudson* nor its progeny require auditors to bear the credentials of certified public accountants—a certification which I notice administratively is not held by all practicing accountants generally in the United States.

The General Counsel specifically disclaimed any attack on the skills or abilities of Respondent International's auditors who performed the audits under attack. While the General Counsel on brief at 61 derides the International's staff auditor as lacking in credentials and belittles their training as es–**[300]**sentially "in house," I find these criticisms irrelevant since they address the manner and form of training and neither its ultimate worth nor its adequacy for the tasks at issue. Thus I find the General Counsel has not established or even attempted to establish that the auditing tasks at issue here require the talents of a certified public accountant or are beyond the skills of those who have done it to date.

Given the failure of the General Counsel to establish the need for certified public accountant credentials for any auditing staff, I shall not consider the contentions of Respondent Unions that such a requirement would be financially ruinous and would result, inevitably, in letting dues objectors become free riders. This is so because I find that the General Counsel has not prevailed in his argument that certified public accountants are part of a minimally qualifying audit system under *Beck*.

The General Counsel's second argument, that *Hudson* requires that union expenditures be verified by an independent auditor and that *Beck* should carry such an obligation to unions under the Act, is on firmer ground. The applicability of *Hud-*

son's procedural requirements to the Board's interpretation of a union's duty of fair representation under the National Labor Relations Act has been argued and decided, supra. Without needless repetition here, I view the dispute under the cases as not sufficiently free from doubt to hold current Board cases in analogous areas have been reversed by these holdings.

Since I have found, supra, that the Board has obligated unions to justify hiring hall referral fees for nonmembers by demonstrating representational type expenses without requiring audits by outside accountants, I find applying *Hudson*, as the General Counsel argues, would constitute a change in existing Board law. I decline to make such a holding in light of the clear split in authority respecting *Hudson*'s applicability to the Act.

I am also doubtful respecting the General Counsel's argument that *Hudson*'s terminology "verification by an independent auditor" requires that outside auditors who are not employees of Respondent Unions serve as independent auditors. The key term at issue is "independent."

The General Counsel argues that the auditing system used by Respondent Unions "is devoid of any semblance of 'independent verification' " (G.C.Br. at 61). Thus, in the General Counsel's view, any audits prepared by International employees are inadequate. In his view the fact that these auditors audit only those District and Local Lodges with which they have had no previous employment and the further fact that the audits are thereafter addressed by the IAM's independent auditor is immaterial given the employee-employer relationship of the International and the auditors. The General Counsel's argument is, in essence, a structural one, i.e., that independence results from and only from the absence of an employer-employee relationship, between the auditors and the union being audited.

It may well be that accounting practice and parlance makes it clear that the term "independent auditor" is a term of art which requires the auditor be completely divorced from the organization whose subunits' accounts are under review. The General Counsel did not adduce evidence nor authority on this point however, nor does the record otherwise contain sufficient evidence to make such a finding. Such matters are not properly resolved by simply taking judicial notice under Federal Rules of Evidence 201. I find therefore that on this record I am unable to

make a finding on this important accounting question. Further I am unable to determine if the question is susceptible to a clear answer under generally accepted accounting principles and practices. This inability undermines the General Counsel's claim for it is the General Counsel who bears the burden of establishing the inadequacy of Respondent Unions' procedures as alleged in the complaint.

Further, the argument of Respondent Unions, not challenged by the General Counsel, that the costs of the audits conducted in accordance with the General Counsel's most rigorous requirements would, as a result of their high cost, make it more economical for the Union to simply not charge dues objectors any amount at all for Local and District expenses so as to avoid the larger auditing costs of administering the objector program, is worthy of consideration. As the Union argues, since the General Counsel makes no contention that the International's audit staff was other than knowledgeable and honest or that the audits themselves were in anyway biased, distorted, or less than objective and correct, the procedural hurdles the General Counsel seeks to impose are not directed at any argued auditing errors or mistakes of any kind resulting from the current procedures.

It is now axiomatic that the power to regulate, like the power to tax, is a power with the potential to destroy. It is not the obligation of the state to waive necessary procedural protections required by *Beck* simply because they are costly or because they will reduce the "take" of the Union.[31] *Beck* rights therefore are not to be enforced only to the extent the union feels it is convenient to do so. This is not to say, however, that procedures must

---

[31]In *Andrews v. Education Assn. of Cheshire*, 829 F.2d 335 (2d Cir.1987), the court held:

> [T]he procedures mandated by *Hudson* are to be accorded all nonmembers of agency shops regardless of whether the union believes them to be excessively costly. Excessive cost cannot form the basis for allowing the union or the government to avoid *Hudson*'s requirement that the procedures used by the union to allocate bargaining and administrative costs be carefully tailored to minimize the intrusion on the nonmembers' rights. [829 F.2d at 339.]

be evaluated without consideration for real world outcomes. Neither the courts of the land nor the Board in its decision making processes are divorced from reality. The blind piling on of ill considered procedures and protections which do little to enhance nonmember rights and are required without consideration of economic realities will quickly render the economics of maintaining *Beck* objector procedures such that they become, as the Union has argued, economically impossible to provide.

This level is reached when the costs of *Beck* administration are so large in proportion to the revenues raised from exactions from dues objectors that it becomes economically necessary that the union involved abandon any effort to collect from objectors. Costs may reasonably be expected, when they have reached a sufficiently high level, to require such action by a prudent union. The forced abandonment of union efforts to collect moneys under a valid union- security clause from any employee who objects to their payment—in effect a sub silentio repeal of the union-security provisions of the Act and the rewriting of the contractual agreements of unions and employers—should, in my view, be directed consciously **[301]** by regulating authority with an appreciation of the consequences of any decision taken as well as for good and sufficient reasons and not indirectly arrived at through the erection of principled and well intentioned, but unnecessary and economically unrealistic, procedural safeguards.

Considering the years of effort of Congress, the courts, and the States under Section 14(b) of the Act, the thousands or perhaps millions of employers bargaining with labor unions over the years respecting union security and the "free rider" issue in contractual, statutory, and constitutional terms, the structures in place to allow unions to compel contributions for representational expenses under union-security arrangements should not be blithely defeated and the laws repealed by the setting of gratuitously onerous procedural hurdles for the union to overcome.

Applying the above standard to paragraph D,11 of the complaint, I find, as described above, Respondent Unions use of International staff to audit District and Local Lodges meets the necessary "independence" standard under *Beck* for the preparation of audits used in the dues apportionment process. I reach this conclusion because the International as a superior organiza-

tional unit has an institutional interest in obtaining objective audits of District and Local Lodges for legal and financial reasons apart from *Beck* issues. International auditing employees therefore have the substantial measure of independence from Local and District Lodges which *Beck* requires.

In reaching this conclusion, I reject as insufficiently proved the General Counsel's per se argument that "independence" exists only when those who undertake *Beck* required audits of District and Local Lodge accounts are not the employees of any organizational unit whatsoever of Respondent Unions. Such a broad finding would represent a change in Board doctrine to date and should not be undertaken by an administrative law judge in the absence of unambiguous controlling authority.

In view of these findings, I find it is unnecessary to consider the Unions' arguments that the procedures the General Counsel seeks would require the Unions to abandon all attempts to collect fees from objectors as simply economically impractical.

In summary, I have found that there is no basis in fact or law for the General Counsel's argument that certified public accountants are required for *Beck* audits of District and Local Lodge accounts. I have accepted the General Counsel's argument that auditors must be "independent." I have rejected the General Counsel's further contention that the term "independent" in accounting parlance requires that such auditors come from outside the Union as failing for want of proof.

I find therefore that the Union's current practice of utilizing International staff, who have not served with or been employed by the District or Local Lodges they scrutinize, to conduct *Beck* audits meets its obligations under the duty of fair representation. Accordingly, I find the General Counsel's allegations in paragraph D,11 of the complaint to be without merit.

(c) *Allegation attacking Respondent Unions' failure to pay nonmembers challenging the Unions' dues and fees calculation for their travel expenses to the site of the arbitration proceeding—complaint paragraph 8(c)*

Complaint paragraph D,8(c) alleges Respondent Unions denied nonunion members their full *Beck* rights by requiring nonmembers challenging Respondent Unions' dues allocations

"to travel at their own expense to the site of the arbitration hearing." The policy states in part at number 6:

> 6. If an objector chooses to challenge the calculation of the advance reduction, there shall be an expeditious appeal before an impartial arbitrator....
>
> > a. Any and all appeals shall be consolidated and heard in the late Fall of the current calendar year or as soon thereafter as the AAA can schedule the arbitration. The presentation to the arbitrator will be either in writing or at a hearing. If a hearing is held, any objector who does not wish to attend may submit his/her views in writing by the date of the hearing. If a hearing is not requested, the arbitrator will set a date by which all written submissions will be received and will decide the case based on the records submitted.
> >
> > b. The union shall pay the costs of the arbitration. Challengers shall bear all other costs in connection with presenting their appeal (travel, witness fees, lost time, etc.). Challengers may, at their expense, be represented by counsel or other representative of choice.

The Union has applied the quoted terms of the policy to all relevant arbitration hearings which have been held at a single location each year. While testimony was adduced that the Union has been willing to provide alternative means for challengers to participate in hearings, no such request has ever been made or alternative provided.

The General Counsel argues that alternatives to physical participation in the arbitration, such as a telephonic link

> do not allow an objector to fully participate by questioning Respondent Unions' witnesses regarding its calculations of the chargeable proportion of his dues, and to offer his own witnesses or testimony [G.C.Br. at 74].

The General Counsel argues that the requirement that an objector travel at his or her own expense to a "distant location" in order to have his or her challenge heard must inevitably discourage

objectors from filing a challenge and thus constitute an improper impediment to the exercise of *Beck* rights citing *Hudson*, *Tierney*, and *Harrison v. Mass. Society of Professors*, 405 Mass. 56, 534 NE2d 1237 (1989).

The General Counsel argues on brief at 74:

> [T]he Act requires that Respondent schedule arbitration hearings to take place at or near the location of the objector/challengers place of employment so as to facilitate the employees' ability to participate in the proceeding.

[302]The Union makes the initial argument that physical presence at the arbitration hearing is not necessary for challengers since they have reasonable alternatives including submission of written material, telephonic participation, or because all objectors will benefit from the arbitrator's ultimate ruling, the luxury of doing nothing. Second, the Union argues that it is aware of no other situation in which the General Counsel or the Board requires a labor organization to pay for or subsidize employees' exercise of statutory rights.

Finally the Union argues that the General Counsel's alternatives to the current policy are impractical. Thus arbitration hearings at or near the location of each challenger's place of employment presents monumental problems of cost and scheduling given the potential numbers of hearing sites involved. Further, were the Union to offer to pay the travel or other expenses of challengers to a common hearing location, costs could escalate extraordinarily. Thus the trip to the arbitration could become a paid holiday for challengers who utilize the opportunity not to actively participate in the arbitration but simply to burden the Unions' finances for general ideological reasons. All this, argues the Union, must be viewed against the reality that no challenger has ever complained of the current arrangements nor asked the Union to accommodate to the challengers desire for an alternative way of participating in the proceedings.

I have considered all the above and am in agreement with the General Counsel, under the guidance of the panoply of cases cited, that under *Beck* the required procedures for perfecting an objection and challenging the labor organization's calculations

may not be unreasonably fettered with unrealistic and excessively complex procedural requirements which would discourage either the filing of challenges or the participation in the process of resolution of those challenges.

I disagree with the General Counsel that the current policy requirement that challengers pay their own way to arbitrations and that challenges are consolidated in a single arbitration, the hearing of which is held at a single site, is improper. I reach this conclusion by considering the degree of restriction on the challengers' rights to participate in the arbitration hearing of the current procedure as well as its ultimate effect on their *Beck* rights.

Although assigning less weight to the factor, I have also considered the practicality of the alternatives available. In my analysis of the allegations of paragraph D,11 of the complaint, supra, which will not be repeated here, I determined that fundamental notions of economic practicality must underlay the imposition of additional procedural requirements which are met to assure *Beck* procedures are available. Thus a rule must be considered both for the benefits it will provide and whether or not as a practical matter unions will be able to comply with it.

Here the Union has established that a challenger's physical presence is not necessary for him or her to be able to participate in the arbitration and to submit argument and evidence. I find that personal appearance is not a critical factor in the exercise of challengers' rights at the arbitration. As noted previously, the filing of a challenge is easily undertaken. Indeed a challenge is not necessary for an objector to obtain the benefits of the arbitrator's decision, if any.[32]

Further, I find some difficulty with the standard the General Counsel seeks to apply. The costs of participation in an arbitration, including costs which the General Counsel does not suggest the Union must bear—such as the costs of representation, witness' fees etc.—will remain for the challenger who wishes to participate personally or through a representative at the hearing.

---

[32]The Seventh Circuit in *Gilpin v. State County Employees*, AFSCME, supra, 875 F.2d 1310, found the fact that multiple challenges are unnecessary to gain the benefits of the arbitration for all objectors to be of relevance in determining the propriety of the union's procedures.

All participants will inevitably bear some personal costs, however slight. Were *Beck* to require all costs be born by the Union, much more would be required than the General Counsel seeks here. It seems therefore that the General Counsel is not seeking to impose all costs of objectors' participation in the arbitration on the Union. Yet, if practical accommodation is the standard the General Counsel is advancing, I find Respondent Unions have met that standard.

Given all the above, and in absence of any specific case law on the question, I do not see how a challenger's *Beck* rights will be improperly compromised or impaired by a labor organization's requiring challengers to pay their own way to an arbitration hearing or limiting the arbitration process to a single annual arbitration held at a single site. Accordingly, I find that Respondent Unions are not obligated under *Beck* either to hold challenge arbitration hearings at or near the place of employment of challengers or to pay for challengers' transport to and from the site of the arbitration hearing. Therefore, I find the General Counsel's complaint paragraph D,8(c) is without merit and shall be dismissed.

C. *Local Issues*

1. Dynamic controls—complaint section E

a. *Events*

(1) Charging Party Mark V. Bluteau

Local 354 has at all times material represented a unit of employees at Dynamics Controls' South Windsor, Connecticut facility. At all times relevant here, the unit was covered by collective-bargaining contracts which contained union-security clauses.

Charging Party Mark V. Bluteau was hired into the Dynamic Controls unit on November 20, 1989, and joined Respondent Local 354 at about that time. He was not informed of his *Beck* rights nor did he receive a copy of the December 1989 Machinist. Bluteau resigned from Local 354 by letter dated February 2, 1990. The parties stipulated that:

Upon receipt of Bluteau's February 2, 1990 resignation from union membership, Respondent Local 354 did not provide him with the following information:

(a) Information concerning the percentage of funds spent by the Union in the last accounting year for non-representational activities;

(b) A statement that a non-member can object to having his/her union security payments spent on such activities;

(c) A statement that an objector will be charged only for representational activities; and

[303](d) A statement that an objector will be provided with detailed information concerning the breakdown between representational and nonrepresentational expenditures.

On May 9 and 31, 1990, District 170 Business Representative John Walker, acting as an admitted agent of Local 354, wrote to Bluteau. The May 9 letter acknowledged Bluteau's letter of resignation, asserted that, even as a nonmember of the Union, a covered employee "must pay your full dues. You will simply be considered an 'agency fee payer' rather than a member." Walker's May 31 letter acted to "serve as official notification" of dues arrearages accruing as a agency fee payer under the contract.

By letter dated June 5, 1990, Bluteau informed Walker, inter alia:

> I also object to the use of the monies which you collect from me for purposes other than collective bargaining, contract administration, and grievance adjustment for the unit of employees of which I am a member. *CWA v. Beck*, 108 S.Ct. 2641 (1988).

Local 354 did not respond in any way to Bluteau's letter nor reduce his dues or fees as a result of its receipt. On June 25, 1990, Bluteau filed Cases 34-CB- 1323 and 34-CB-1324 against the International and Local 354.

By letter dated August 13, 1990, Respondent International General Secretary-Treasurer Ducy informed Bluteau that his dues objection was perfected effective February 1990 and that

his Lodge's financial officer had been advised "to immediately refund any overpayment already made in 1990 and to adjust your monthly fees to the proper rate." Thereafter Bluteau was treated as other perfected dues objectors.

By letter dated March 20, 1991, Local Lodge 354 through its financial secretary Laura Belanger sent Bluteau a letter reciting a failure to pay "non-member objector fees" for the period April 1990 through February 1991. The letter provided the arithmetic specifics of the arrearages and established a dues date of April 20, 1991, for payment. The letter asserted that failure to comply would result in notification of the Company of contractual noncompliance and "your discharge will be sought in accordance with the terms of the agreement." The letter concluded: "Your payments will be placed in an interest bearing escrow account and returned to you in the event the NLRB rules in your favor."

By letter dated July 23, 1991, Belanger again wrote to Bluteau. The letter recited dues objector delinquencies for the months of March through July 1991, set forth the arithmetic particulars and set a due date of August 2, 1991, for the removal of arrearages. The letter indicated the moneys would be placed in an interest bearing escrow account and added:

> If you prevail in your case before the NLRB the appropriate amount of that escrowed money will be returned to you. If the union has not received your back dues by this date, or if you again become delinquent by more than two months—even by a day—the union will immediately demand your discharge from employment.

All fees received by the Union from Bluteau since August 13, 1990, have been placed in an interest bearing escrow account. The amount of objector dues and the amount refunded by the arbitrator were determined in accordance with the policy as discussed in this decision supra. Neither District 170 nor Respondent Local 354 was included in the sample survey of District and Local Lodges for calendar year 1990.

(2) Charging Party Martha L. Payne

Charging Party Martha L. Payne was hired into the Dynamic Controls bargaining unit on June 19, 1989, and joined Local 354 at about that time. Payne was not sent the December 1989 issue of the Machinist. She sent a *Beck* objection letter to Local 354 on March 13, 1990.

By letter dated May 9, 1990, John Walker, acting as agent for Local 354, wrote to Payne acknowledged her letter "considering yourself a 'non-member' of the International Association of Machinists and Aerospace Workers, Local Lodge No. 334." The letter informed Payne that her objection letter was untimely under the Union's policy and further informed her that she was obligated to pay full dues the specifics of which were recited in the letter.

Payne filed Cases 34-CB-1315 and 34-CB-1316 against Respondent International and Respondent Local Lodge 334 on June 4, 1990.

On August 13, 1990, Ducy sent a letter to Payne similar to that described above sent on that same date to Bluteau save that it announced her objection was perfected effective in March 1990. On March 20, 1991, Local Lodge 324 mailed a letter identical in text to that sent to Bluteau on the same date save that Payne was not billed for objector dues for the months of September, October, November, and December 1990.

As with Bluteau, supra, all fees received by the Union since August 13, 1990, have been placed in an interest bearing escrow account. Payne's fees charged her by the Union since August 13, 1990, have been established in accordance with the Union's policy.

(3) Charging Party Gene C. Dinsmore

Charging Party Gene C. Dinsmore was hired into the Dynamic Controls bargaining unit in May 1967 and joined Local Lodge 354 soon thereafter. Although he regularly received the monthly Machinist newspaper he did not read it nor had he read the Union's policy contained in the December 1989 issue. Dinsmore sent Local 356 a dues objection letter dated March 21, 1990. He received a letter from Local 354 dated May 4, 1990, identical in its text to that sent to Payne on the same date described above.

Dinsmore filed Cases 34-CB-1313 and 34-CB-1314 against Respondent International and Respondent Local Lodge 354 on June 4, 1990. Respondent Unions did not recognize Dinsmore as a *Beck* objector and continued to seek full dues from him throughout calendar year 1990.

Dinsmore received the March 20, 1991 letter sent to Bluteau and Payne as described above save that the arithmetic arrearage total was larger as a result of his being billed full dues in calendar 1990.

All fees charged by the Union to Dinsmore since January 1991 including refunds directed by the arbitrator have been in accordance with the Union's policy. All fees received from Dinsmore since August 13, 1990, have been placed in an interest bearing escrow account.

[304]b. *Analysis and conclusions*

(1) Complaint paragraph E,4

Paragraph E,4 of the complaint alleges that Respondent Local 354's failure to supply initial *Beck* rights information to Charging Party Bluteau upon receipt of his resignation from the Union violated Section 8(b)(1)(A) of the Act. The subsections of the paragraph specify the information wrongfully withheld:

> (a) Information concerning the percentage of funds spent in the last accounting year for non-representational activities.
>
> (b) A statement that a non-member can object to having his/her union security payments spent on such activities.
>
> (c) A statement that an objector will be charged only for representational activities.
>
> (d) A statement that an objector will be provided with detailed information concerning the breakdown between representational and non-representational expenditures.

There is no dispute the factual contentions of the complaint paragraph are correct.

The General Counsel in a reprise of his argument in support of paragraph D,7 of the complaint argues *Hudson*'s procedural

requirements including its notification requirements apply to Respondent Unions. Respondent Unions did not specifically address complaint paragraph E,4 but did argue against the General Counsel's theory of a violation under complaint paragraph D,7. The arguments of the parties will not be repeated here.

I found, supra, that requiring unions to notify employees of their statutory rights, like *Beck* rights, would not only establish new Board law, it would require the reversal of existing Board law. I further found that current dues objector decisions in the public sector, like *Hudson*, or even under the Railway Labor Act, are not so clearly applicable to the Board's interpretation of a union's duty of fair representation in an unfair labor practice proceeding as to justify reversal of current Board law by an administrative law judge. Given these findings, and consistent with them, I further find Respondent Unions have not violated Section 8(b)(1)(A) of the Act in failing to similarly inform Bluteau. Accordingly I find the General Counsel's complaint paragraph E,4 subparagraphs (a) through (d) as wanting in merit. They shall be dismissed.

(2) Complaint paragraph E,6–

Complaint paragraph E,6 and its subparagraphs alleges that since its receipt of Bluteau, Payne, and Dinsmore's dues objection letters, Respondent Local 354 has:

> (a) refused to recognize Dinsmore as an objecting non-member for all of calendar year 1990;
>
> (b) refused to recognize Payne and Bluteau as objecting non-members until August 13, 1990;
>
> (c) continued to seek and accept from Dinsmore, during calendar year 1990, fees equivalent to full dues as a condition of his continued employment at Dynamic Controls; and
>
> (d) continued to charge Bluteau, Payne and Dinsmore for non-representational activities in the manner set forth above in [complaint] paragraph D.10.

Complaint paragraph E,6, subparagraphs (a), (b), and (c), turn on the propriety of the Union's refusal to accept dues objector

applications outside of the January window period provided in the policy. In paragraph D,7(c) the General Counsel alleges that the Union must provide resignees with an opportunity to resign outside of the window period. I have found, supra, that Respondent Union may not limit the rights of union resignees to file dues objector applications to its policy window period of the month of January. The three individuals at issue here are union member resignees. The policy limit therefore does not apply to them. Respondent International and Respondent Local Lodge 354 have therefore violated Section 8(b)(1)(A) of the Act in refusing to honor the objector letters. Accordingly, the General Counsel's complaint paragraphs E,6(a), (b), and (c) have merit and will be sustained.

Respondent Unions argue that any violation of subparagraph E,6(b) was remedied by subsequent conduct. The remedial conduct occurred only after Payne and Bluteau filed charges. Further, as the General Counsel argues, Respondent Unions have not admitted the unlawfulness of their conduct nor provided assurances that they will not engage in such conduct in future. Such circumstances require a remedial order. See, e.g., *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978).

Complaint subparagraph E,6(d) alleges that the Union continued to charge the three Charging Parties for non-representational activities in the manner alleged in complaint paragraph D,10. Paragraph D,10 alleged as nonrepresentational expenses: "various expenses including, inter alia, legislative expenses and expenses not attributable to Respondent Unions' representation of objecting non-members bargaining unit."

On brief the General Counsel argues these "various expenses" include legislative expenses and expenses associated with litigation benefitting other units. The General Counsel argues further on brief at 92-93: "Moreover, its expenses and those of the district and local lodges included in its survey related to legislative and lobbying activities are not chargeable as a matter of law [citation omitted]."

Respondent Unions address this allegation by referring to its argument on paragraph D,10 of the complaint. In that portion of their brief as noted supra, Respondent Unions acknowledge that until *Lehnert* they charged dues objectors for "a small part" of legislative expenditures but argue that the violation was de

minimis and that at the compliance stage of the proceedings they will establish that no remedy is appropriate.

There is no dispute that after their objector status was acknowledged, the Union treated the three Charging Parties as other objectors under its policy. I have found, supra, in addressing complaint paragraph D,10 that unit-by-unit expense allocation, save for litigation expenses, was not required. I also found, consistent with the admission of Respondent Unions, that dues objectors were improperly charged for legislative expenses. Finally, I found that Respondent Unions' system of apportionment of litigation expenses was improper **[305]**and that as a consequence dues objectors were charged for extra unit litigation expenses.

Applying those findings here, I find that Respondent Unions violated Section 8(b)(1)(A) of the Act by continuing to collect legislative expenses and extra unit litigation expenses from the Charging Parties after their dues objector status was recognized. I do not find that the General Counsel sustained this subparagraph of the complaint respecting the Union's failure to engage in unit- by-unit allocation of qualifying expenses other than litigation expenses.

(3) Complaint paragraph E,7

Paragraph E,7 of the complaint alleges that by letters dated March 20, 1991, Respondent Local 354 threatened Charging Parties Bluteau, Payne, and Dinsmore that it would seek their discharge for nonpayment of fees which included charges for nonrepresentational activities.

The letters, quoted above, threaten to seek the discharge of the Charging Parties unless they paid nonmember objector fees. While the fees set for these Charging Parties were set consistent with the Union's policy, as I have found supra, the fees included improper charges for certain legislative and extra unit litigation expenses. Thus complaint paragraph E,7 is factually correct.

The General Counsel's argument respecting the legal conclusions to be drawn from these facts is brief:

> Because a union may not unlawfully seek the discharge of a non-member employee for non-payment of dues to which

> he objects, such threats violate Section 8(b)(1)(A) because they have the natural tendency to restrain and coerce non-members into financially supporting the union beyond what is permitted under *Beck*. See *Dean v. TWA*, supra, 924 F.2d 805. [G.C.Br. at 93.]

Respondent Unions renew their arguments that no portion of the amounts sought from the three Charging Parties were improper. Counsel makes a further argument however:

> If the General Counsel prevails on this point, whenever there is *any* [emphasis in the original] allegation concerning the propriety of the unions' dues objector system, the Union enforces a union security clause at its peril: if the Board ultimately determines that there is any flaw in the system, no matter how minor, and the union has enforced its security clause, it would be liable for back pay and other damages. Were this position adopted, as a practical matter unions would be unable to enforce their union security clauses whenever a non-member challenges the dues objector procedure—a challenge that will take years to resolve under current Board practice. And because this is a new and rapidly developing area of law, no union counsel could advise his or her client with certainty that any given challenge to the union's system is baseless. [R.U.Br. at 96-97.]

Respondent Unions argue further that where a union has a bona fide dues objector system in place and a dispute arises over the amount of the dues objector's payments, it should be allowed to compel collection of the fees so long as the fees are held in an interest bearing escrow account assuring that the union will not have the use of the fees pending resolution of the dispute. Respondent Unions note that the letters sent the Charging Parties specifically indicated: "Your payments will be placed in an interest bearing escrow account and returned to you in the event the NLRB rules in your favor."

As Respondent Union points out on brief, both *Machinists v. Street*, 367 U.S. at 771, supra, and *Railway Clerks v. Allen*, 373 U.S. at 120-121, held that unions remained able to collect

the representation expense portion of their dues and that stopping all collection of dues because of imperfections in the system was not the intent of Congress.[33]

Hudson held that the first amendment required various procedural protections including the escrow of initial funds to ensure that funds not ultimately determined to be for representational expenses were not even temporarily used by the union for an improper purpose. The Court thus rejected the union dues collection plan providing for a later dues refund stating:

> a remedy which merely offers dissenters the possibility of a rebate does not avoid the risk that dissenters' funds may be used temporarily for an improper purpose. [*Hudson*, 475 U.S. at 305.]

In *Tierney* the Sixth Circuit held that *Hudson* required that no union could take any action to enforce a nonunion employee's duty to pay dues unless all requirements had been met. In *Dean v. TWA*, supra, 924 F.2d at 809, the Ninth Circuit held that a failure of a union to institute any form of *Hudson* procedures justified a dues objector's unilateral reduction of fees after he was unable to obtain an accounting.

As noted, supra, I have concluded that the public sector and Railway Labor Act cases are not of such unambiguous application to Board unfair labor practice duty of fair representation law as to control over current Board law. The Board in a long line of cases flowing from the fountainhead case of *Philadelphia Sheraton*, supra, 136 NLRB 888, endf. 320 F.2d 254, has established a strict fiduciary obligation on the part of a union seeking to enforce a union-security obligation to inform unit

---

[33] Respondent Unions also argue that the General Counsel in this case has conceded Respondent Unions are entitled to fees for representational expenses even when their *Beck* policy was inadequate. Thus Respondent Unions quote from the Regional Director's dismissal letter in Case 34-CB-1440-23 (formerly Case 20-CB-8089) to Charging Party Ricky Gene Pebley:

> Furthermore, to the extent that it has been contended that the Unions violated the Act by failing to refund all monies to *Beck* objectors, it is concluded that the Unions are entitled to charge for representational costs, even for periods when their *Beck* system was deficient.

members of the precise amount owed before any discharge request is made. Absent a showing that the employees involved have willfully and deliberately sought to avoid their fee obligations,[34] such a requirement is strictly enforced. Thus the Board held in *Eclipse Lumber Co.*, 95 NLRB 464 (1951), that insistence by the union on an employee's payment of an amount in excess of what could properly be demanded relieved the employee of the duty to tender the lesser amount. It further held that it is un–**[306]**lawful for the union to procure the employee's discharge for failure to tender moneys under such circumstances.

I have found the Unions' dues recitation to the Charging Parties incorrect because representational expenses used to calculate the formula improperly included extra unit litigation expenses and legislative expenses. Under current Board law the amounts sought by the Union were therefore not precise. A threat to cause or attempt to cause the discharge of an employee for a failure to pay an incorrect amount is a violation of current Board law. The Board would not find a violation in such circumstances if the employee were simply a "free rider" with no intention of paying dues in any amount. *Seafarers Great Lakes District (Tomlinson Fleet Corp.)*, 149 NLRB 1114 (1964). In the instant case the record indicates that the Charging Parties were aware of and had acknowledged their obligation to pay for representational expenses.

Respondent Unions' counsel argue that such a rigid doctrine produces inevitable inequities since the Union is admittedly owed something and is entitled to receive it, but is at risk if it seeks too much from the employee. The strict fiduciary standard the union bears toward represented employees and current case law on the issue seemingly admit of no exceptions other than those noted, supra. Therefore I find that the Act has been violated as alleged. I find further that Respondent Unions' announced intention to escrow any funds collected until the final resolution of the dispute is not a defense to the violation

---

[34]See, e.g., *Big Rivers Electric Corp.*, 260 NLRB 329 (1982); *Teamsters Local 630 (Ralph's Grocery Co.)*, 209 NLRB 117 (1974).

alleged.[35] Accordingly, sustaining the General Counsel's complaint paragraph E,7, I find that Respondent Unions' letters to the three Charging Parties were improper threats to cause the employees' discharge and were not privileged by the inaccurate dues amount demanded from the employees. Such conduct therefore violates Section 8(b)(1)(A) of the Act.

2. Electric boat—complaint section F

a. *The events*

At all relevant times Respondent Local Lodge 1871 has been a member of the Metal Trades Council of New London County (the Metal Trades Council) and the designated representative of employees within its trade jurisdiction employed in the electric boat bargaining unit. At relevant times the parties have maintained a collective-bargaining agreement with a union-security provision. Local Lodge 1871 shares the moneys collected from unit employees pursuant to the union-security provisions with the Metal Trades Council, with Respondent District Lodge 170 and Respondent International.

Since January 1989, David B. Mitchell, Lawrence H. Stone Jr., James Fonk, Plaul Kazlaukas, and John Licciardi, employees in the portion of the electric boat unit represented by Local Lodge 1871, have been recognized by Respondent Unions as objecting nonmembers and have been charged reduced fees calculated by Respondent International under its procedures described, supra.

---

[35]The Union and its counsel are not in a fatally impossible position. Respondent Union could have simply demanded payment of an amount they had confidence would ultimately be justified by the litigation then underway, i.e., a smaller amount conservatively calculated in light of the portions of the fee calculation under challenge, deferring collection of the greater but perhaps less confidently defended amount until the litigation was resolved. Had Respondent Unions not received payment in that situation, a different circumstance might have obtained. Employees who simply refuse to pay in bad faith fall under the *Seafarers* case, supra. In any event these are hypothetical issues for learned counsel and his client, not for this proceeding.

These employees, consistent with Respondent Unions' policy and procedures as described, supra, received only a summary of the Respondent International's expense accounting categories and the survey of District and Local Lodge expenses previously described. These employees' dues reductions were not calculated on a unit-by-unit basis. Rather they were determined and the employees were charged objector dues in part based on the survey of a sample of District and Local Lodges—which survey has not included either Local 1871 or District Lodge 170 since 1989—and which dues included a portion for legislative expenses.

b. *Analysis and conclusions*

The sole complaint paragraph in section F alleging a violation of the Act is paragraph F,5. It states:

> Since on or about January 1, 1991, in the manner set forth above in [complaint] paragraph D,10, Respondent Local 1871 has charged Mitchell and Stone, and other objecting non-members of the Electric Boat unit, for non- representational activities.

Both Respondent Unions and the General Counsel rely on the arguments made in support of complaint paragraph D,10. In dealing with that paragraph of the complaint, supra, I held that, although Respondent Unions were not obligated to determine dues objector fee reductions on a unit-by-unit basis generally, they were so obligated as to litigation expenses. Further I found that legislative expenses had been improperly charged to dues objectors.

Applying those findings to the instant paragraph, I find that David B. Mitchell, Lawrence H. Stone Jr., James Fonk, Paul Kazlaukas, and John Licciardi were improperly charged for certain extra unit litigation expenses and for certain legislative expenses. To this extent Respondent International and Respondent Local Lodge 1871 have violated Section 8(b)(1)(A) of the Act as alleged in paragraph F,5 of the complaint. Again applying my findings under complaint paragraph D,10, supra, I do not find that these individuals were improperly charged for other

nonunit expenses even though their District Lodge and Local Lodge were not part of the survey on which the District and Local Lodge portions of representational expenses were calculated.

3. California Saw—complaint section G

a. *Events*

Respondent California Saw has for very many years been a party to a multiemployer collective-bargaining agreement between the California Metal Trades Association, Respondents International, and District Lodge 115 covering a unit of employees which includes California Saw employees employed in San Francisco, California. At all relevant times the **[307]**contract has included union- security language.[36] Respondent Local Lodge 1327 is a member of Respondent District Lodge 115 and is the agent of Respondents International and District Lodge 115 for purposes of administering the contract, accepting employees as members, collecting moneys from employees, and maintaining membership records.

Peter Podchernikoff was employed by Respondent Employer in the unit from 1970 to 1972 and from 1973 through the events in issue here. At relevant times until the recent events discussed below, Podchernikoff was a member of Respondent Local 1327. Raymond Ceballos, the secretary-treasurer of Local Lodge 1327, testified that at the time of Podchernikoff's 1972 employment hiatus, he sought and obtained a union withdrawal card.

---

[36]The contract, at art. II, sec. (a), provides covered employees shall become and remain members of the Union after 31 days. Art. II, sec. (c) states:

> In the application of paragraph (a) above, when the Employer is notified by the Union in writing that an employee has failed to make application and tender the Union initiation fee or reinstatement fee, or is not a member in good standing by failing to tender the union dues, the employer shall no earlier than two (2) days nor later than five (5) days thereafter terminate such employee.

In early 1989, Podchernikoff contemplated establishing himself in another area of California. As a precaution, in the event things did not work out, Podchernikoff asked for and obtained from Respondent Employer's president, Warren Bird, a leave of absence for the period May 23 through November 22, 1989. Podchernikoff testified that he also had a conversation with Union Business Representative John Moran and asked Moran if he could obtain a withdrawal card for his leave of absence. Podchernikoff recalled that Moran told him he could obtain a withdrawal card and that a withdrawal card would save a later reinstatement fee.[37] Ceballos testified that, having learned from Moran and the California Saw shop steward that Podchernikoff contemplated a leave of absence, he mailed Podchernikoff a withdrawal card application.

Podchernikoff commenced his leave as agreed upon but neither filed a withdrawal card application, nor change of address with the Union, nor notified the Union at any level that he was in fact commencing a leave.[38] Neither did he submit dues payments to the Union following the payment of his April 1989 dues. Time passed and the Local became aware that Podchernikoff was 2 months behind in his dues. Consistent with normal procedure, a postcard seeking payment was sent to Podchernikoff's listed address. No response was received. Eventually the Local learned from the shop steward that Podchernikoff was no longer at work. Thereafter a letter was sent by Local 1327 to California Saw informing it that Podchernikoff had let his membership lapse by operation of the

---

[37]A member of the Union obtains a withdrawal card for a $2 fee. When the Union learns the leave of absence has begun, appropriate entries are made in the member's dues records at the Local and International level putting his membership in stasis. Upon the member's return to work he or she pays a $10 fee and resumes paying monthly dues.

[38]California Saw forwarded a copy of a June 5, 1989 letter it sent Podchernikoff confirming the commencement of his 6-month leave on May 23, 1989, to Moran at District Lodge 115. Dues status records are maintained by Local Lodges and the International however and neither the International nor the Local was forwarded a copy of this communication

2-month rule[39] and demanding that as a member of the bargaining unit Podchernikoff be discharged if he did not pay a reinstatement fee. The Union took no further action on the matter.

On November 27, 1989, Podchernikoff returned to work. He did not contact the Union. In late December as the result of Podchernikoff's filing a grievance against his Employer and the Union resolving the matter, Moran and Ceballos came to learn that Podchernikoff had returned to work. Ceballos and Podchernikoff spoke by phone soon after. Ceballos told Podchernikoff that he owed a reinstatement fee to the Union. Ceballos testified that Podchernikoff told him that he felt that he should not have to pay the reinstatement fee because, in Podchernikoff's view, payment of the reinstatement fee was the responsibility of the employer, that because the employer had not notified him of his right to obtain a withdrawal card, the employer should pay, if anyone.

In early January 1990, Podchernikoff mailed a check to Local 1327 for $36—1 month's dues. The check was marked "December dues." Ceballos testified that he reached Podchernikoff by telephone and told him the he owed a $125 reinstatement fee and that his check would be applied toward that obligation. Podchernikoff indicated he would consider Ceballos' position and Ceballos reasserted that the check amount would only be put toward the reinstatement fee.[40]

Respondent Local Lodge 1327 then contacted Respondent California Saw by letter dated January 30, 1990, notifying it that Podchernikoff was delinquent in paying his $125 reinstatement fee and demanding his termination absent settlement or withdrawal of the demand by February 2, 1990. California Saw asked Podchernikoff about the matter and he challenged the propriety of assessing a reinstatement fee. Respondent Employer then wrote to Ceballos by letter dated February 2, 1990, acknowledging the Union's January 30, 1990 discharge demand, asserting that Podchernikoff had "raised a question about the validity of

---

[39] By constitutional provision, a 2-month lapses membership.

[40] The check was not in fact deposited into any account at this time.

the financial obligation," and requesting that Ceballos "look into this matter and advise us further."

By letter dated February 5, 1990, to Local Lodge 1327 with copies to Respondent Employer and others, Podchernikoff, inter alia, resigned from the Union, sought to be a financial core member and objected to paying for non-representational expenses of the Union. By letter dated February 12, 1990, Respondent International acknowledged Podchernikoff's February 5, 1990 letter and told him that his objection was not perfected because his request was not postmarked or received during the appropriate 30-day period.

Ceballos by letter to Bird dated February 6, 1990, responded to his February 2, 1990 letter. Ceballos asserted Podchernikoff's dues had been delinquent and his membership had lapsed in June 1989. He further stated that Podchernikoff well knew how to obtain a withdrawal card, that Moran has so advised him, and that Podchernikoff has simply failed to either apply for a withdrawal card or otherwise notify the Union of his change in work status or address.

By four-page single spaced typewritten letter dated February 8, 1990, Hugh L. Reilly, staff attorney for the National Right to Work Legal Defense Foundation, acting then **[308]**as now as counsel for Podchernikoff, wrote to President Bird marshalling fact and law on behalf of Podchernikoff's claim that the reinstatement fee was not properly assessed citing, inter alia, *Teamsters Local 439 (Tracy American Ready Mix)*, 281 NLRB 1232 (1986).

Thereafter by letter dated February 15, 1990, Pamela Allen, counsel for Local Lodge 1327 and District Lodge 115, wrote to Bird weighing in with her factual and legal argument contesting Reilly's letter and supporting the Union's demand for the discharge of Podchernikoff citing, inter alia, *John J. Roche & Co.*, 231 NLRB 1082 (1977). On that same date District Lodge 115, as noted by Allen in her letter to Bird, wrote to Podchernikoff reciting that his resignation was effective February 6, 1990, the date the letter was received, and that he was thereafter an agency fee payer. The letter further recited however that he owed a reinstatement fee of $125 effective December 1989 and

January 1990's dues of $36.[41] Podchernikoff was informed that unless this amount was tendered by March 5, 1990, the Union would demand the Employer discharge him. Podchernikoff refused to pay the reinstatement fee. By letter dated March 6, 1990, hand delivered to Bird and Podchernikoff, District Lodge 115 officially asked Respondent Employer to discharge Podchernikoff in not less than 2 nor more than 5 days. Before his discharge on March 9, 1990, Podchernikoff met with Respondent Employer's president and District Lodge officials. The Union offered to place the disputed sum in an escrow account pending resolution of the dispute by the NLRB and the courts while Podchernikoff remained employed. Podchernikoff declined to pay under those terms and was discharged.

b. Analysis and conclusions

(1) The allegations against the Union

(a) *Complaint allegations G,5, 6, and 7*

The General Counsel's complaint alleges at paragraph G,5 that the Respondent International, District 115, and Local 1327 in February and March 1990 informed Podchernikoff that he must pay a reinstatement fee as a condition of continued employment with California Saw and threatened his discharge for failure to pay such reinstatement fee. Complaint paragraph G, 6 alleges that Respondent Unions sought Podchernikoff's discharge on March 6, 1990. Paragraph G,7 contends the Unions took these actions notwithstanding the fact that Podchernikoff was no longer obligated to pay a reinstatement fee. Respondent Unions are alleged to have violated Section 8(b)(1)(A) and (2) of the Act thereby.

The General Counsel argues Respondent Unions improperly sought Podchernikoff's discharge under several theories. The General Counsel argues initially that his theory of violation "in substantial part" is predicated on the fact that in November 1989 Podchernikoff was not a union member and that the Unions

---

[41] The letter also stated that Podchernikoff's earlier check for $36 had not been cashed since it was unaccompanied by the reinstatement fee amount.

improperly treated him as such in seeking a reinstatement fee. Second, the General Counsel argues that Podchernikoff should have been afforded his initial *Beck* rights before any lawful demand for payment could be made. Finally the General Counsel argues, on brief at 101:

> Respondent Unions independent failure to meet traditional Philadelphia Sheraton fiduciary standards made the demand for his discharge unlawful. Under the circumstances herein, Respondent California Saw violated Section 8(a)(1) and (3) of the Act given that it absolutely knew of the circumstances upon which the request for discharge was based, but, nevertheless, acceded to the request.

The General Counsel emphasizes that when Podchernikoff returned to work in November 1989 his union membership had been canceled and he at no time indicated to the Unions that he wished to reacquire membership. The General Counsel then argues, at brief 102-103:

> [Podchernikoff] did not leave the bargaining unit insofar as the Local Lodge was concerned [transcript citation omitted]. Thus, as a non-member, his only obligation was to tender "dues." See *Office Employees Local 2 (Washington Gas Light Co.)*, 292 NLRB 117 (1988) enf. [902] F.2d [1164], 134 LRRM 2213 (4th Cir.1990); *Teamsters Local 439 (Tracy American Ready Mix Co, Inc.)*, 281 NLRB 1232 (1986), enf. 837 F.2d 888 (9th Cir.1988); *United Food and Commercial Workers Local 115 (California Meat)*, 227 NLRB 676, n. 1 (1985). To the extent Respondent Unions sought to charge him more than "dues," i.e. a "reinstatement" fee, it was imposing a fee for a lapsed, or, in effect, resigned members, a fee which it could not exact.
>
> . . . .
>
> The Local Lodge was seeking to charge Podchernikoff to acquire a status he gave no indication of wanting to acquire. Respondent Unions denied Podchernikoff the rights of membership, but placed on him the burden. While he may have had obligations under the union security clause, his obligation was a financial one and not, as Respondent

Unions would have, the obligation to become a full member of its organization. Cf. *Federation of Telephone Workers of Pennsylvania (Bell of Pennsylvania)*, 226 NLRB 427 (1976); *Simmons Company*, 150 NLRB 709 (1964). Respondent Unions' efforts to effectuate his discharge were therefore unlawful.

Counsel for Respondent Unions acknowledges the cases cited by the General Counsel concerning the right of an employee to resign from a union yet remain free from the imposition of an additional initiation or reinstatement fee. Indeed he further cites *Professional Engineers Local 151 (General Dynamics)*, 272 NLRB 1051, 1051-1052 (1984), and *Carpenters Local 470 (Tacoma Boatbuilding)*, 277 NLRB 513, 514 (1985), for the proposition.

Respondent Unions counsel argues strongly that the instant case is distinguishable from the facts of those cases. Thus he argues on brief at 109:

> In sharp contrast to the charging parties in the above cases, however, Podchernikoff has in no way been discriminated against: he has been treated no differently than any other employee who fails to obtain a withdrawal card before he takes a leave of absence. This is not like the cases in which unions have be found to violate the Act, in which the charging party continued **[309]**to pay dues at all relevant times, and was being charged a new reinstatement fee only because he exercised his right to resign.
>
> Here, Podchernikoff stopped paying dues, and failed to inform the Union that he had taken a leave of absence. He was not being punished "for exercising his Section 7 right to resign," but for failing to obtain a withdrawal card. He would have received the same "punishment" whether or not he was a union member at any relevant period.
>
> . . . .
>
> In sum, the Union hasn't penalized Podchernikoff for exercising a Section 7 right, and it hasn't treated him any differently than any other member of the bargaining unit who takes a leave of absence without first obtaining a withdrawal card. The Union fully informed Podchernikoff

of his options in this regard, and explained the consequences of his failure to obtain the card. He declined to do so, evidently, because he had decided not to return to the Company. By enforcing a uniformly applied union rule that in no way burdens the right to resign, the Union does not violate the Act.

Respondent Union is correct that the cases underpinning the General Counsel's theory in this aspect of his case are different from the instant case in several particulars. First, in the cited cases the individuals resigned from the union in a context which made it manifestly clear that the act of resigning was an exercise of Section 7 rights. Second, in all the cases cited, the labor organization seeking the second initiation fee or reinstatement fee was found to be imposing the fee as a punishment or penalty for the exercise of the Section 7 rights.

Respondent Unions argue that the instant case is totally free of any evidence of animus or retaliation for protected conduct. Thus, counsel asserts there was simply no hostile motive on the Union's part in assessing the reinstatement fee. Rather the reinstatement fee was imposed pursuant to a uniform rule, a rule which had been explained to Podchernikoff before he commenced his leave of absence, and a rule which was logically based on the costs imposed on the Union in restoring a lapsed union member to current union member status.

In determining the validity of the reinstatement fee, it is relevant to establish the applicability of the contract and union-security clause to Podchernikoff before, during, and after his leave of absence. There is no doubt that until his departure on his leave of absence, Podchernikoff was a working unit employee covered by the contract and the union-security clause. During this time Podchernikoff was also a union member and current in his dues.

The contract specifically addresses the status of an employee on a leave of absence at article XIX, section 4. It is clear that, if, as in Podchernikoff's case, an employee is granted a leave of absence of 6 months or less and returns to work consistent with its terms, the employee retains his or her seniority and on his return is not considered a new employee.

Podchernikoff was therefore a unit employee with continuing rights under the contract during his leave of absence.

There is no contention that while on his leave of absence Podchernikoff was obligated under the union-security clause to continue to pay monthly dues.[42] Indeed the Union specifically told Podchernikoff in its February 15, 1990 letter: "The Union will not assess dues for the months in which you were on leave. . . ." During his leave, therefore, Podchernikoff was an employee with continuing contract rights, but was not covered by the contract's union- security provisions.

Upon his timely return to work at the end of his scheduled leave of absence, Podchernikoff was simply a continuing employee with the union-security provisions once again applicable to him. No party argues that Podchernikoff on his return was to be treated as a new employee or a returning employee after an earlier quit.[43]

As a result of this bifurcated status, Podchernikoff was at all times an employee but was not covered by the terms of the union-security provisions for an interim period. It was during that union-security hiatus that he let his union membership lapse. Thereafter, and specifically during the time the Union was seeking its reinstatement fee, Podchernikoff made it clear he did not wish to resume full membership in the Union.[44]

---

[42]Were Podchernikoff or any other unit employee under a union-security obligation to default on that obligation, the union may under appropriate circumstances seek his or her discharge and thereafter require a new initiation fee or reinstatement fee for resumed employment.

[43]Had Podchernikoff been contractually defined as a new employee upon his return to work, a different situation may well have applied. In *Steelworkers Local 14940 (Voyager Emblems)*, 215 NLRB 840 (1974), the union was held entitled to impose a new initiation fee on a employee who quit her employment, allowed her union membership to lapse and thereafter returned to work.

[44]Had Podchernikoff expressed a desire to rejoin the Union, a reinstatement fee could clearly have been imposed. *Simmons Co.*, 150 NLRB 709 (1964).

Having broken Podchernikoff's status down as set forth above, it is clear that his situation here is similar to the employee who resigns or discontinues union membership during a contract hiatus or strike and is thereafter confronted with a resumed union-security obligation when a new contract with a union-security clause is entered into. As the cases cited and discussed by the parties, supra, make clear, a union may not punish employees who exercise their Section 7 rights to abandon membership in the union in such cases.

Respondent Unions seek to distinguish those cases on the basis that they hold unions may not punish employees' exercise of their Section 7 rights but there was no such exercise of rights under the Act in the instant case and, in any event, the expression of such rights was not the reason for the imposition of the reinstatement fee. As counsel for Respondent Unions argue on brief at 109: "[Podchernikoff] was not being punished 'for exercising his Section 7 right to resign, but for failing to obtain a withdrawal card," and, on brief at 110:

> To put it another way, unlike the charging parties in any of the cases that will be cited by the General Counsel or Podchernikoff, it was Podchernikoff's failure to pay dues after April of 1989 that led to his reinstatement fee obligation, and not his decision to resign from the Union in February 1990. Thus he was not "similarly situated" to employees who continued to pay dues, or to those who obtained a withdrawal card before they ceased paying dues.

[310]Respondent Unions paint a picture of a reasonable union offering helpful advice to a member respecting the obtaining of a withdrawal card and an overreaching and negligent union member who through sloth and inattention both omits to obtain a withdrawal card and fails to inform the union of either his commencement of his leave of absence or his change of address. Respondent Union argues that, confronted with this situation which caused it to incur unnecessary costs and inconvenience, the Union simply applied a benign and universally applicable rule to assess a reinstatement fee upon Podchernikoff's return to work.

I agree with Respondent Union's counsel that its conduct here was not driven by animus against Podchernikoff's exercise of Section 7 rights but was rather a standard application of a uniformly applied union rule. I do not necessarily accept the asserted proposition that Pochernikoff's cessation of dues payments at a time he thought he was not going to return to Respondent California Saw's employ was other than an expression of protected Section 7 rights. I do not find it necessary to decide that question.[45] I find it unnecessary to do so because it is not the nature of Podchernikoff's conduct or the Union's response to it which frames the issue and drives the conclusions here. Rather I find the allegations are governed by the limitation on permissible actions of unions under Sections 8(b)(2) and 8(a)(3) of the Act.

I find that the attempted imposition of the reinstatement fee was improper, not because it was retaliatory, but rather because it was imposed for reasons other than a failure of Pochernikoff to tender dues and fees during the time he was bound by a union-security clause. Board law is clear that a union-security clause may not be invoked to collect dues and fees other than those properly due and owing under the clause. Thus for example, nondues and fee obligations such as fines may not be coercively collected under the rubric of a union-security obligation nor may the failure to pay obligations incurred outside the coverage of the union-security clause of the contract union be the basis for seeking an employee's discharge. *Furniture Workers Local 140 (Englander Co.)*, 109 NLRB 326 (1954); *Spector Freight System*, 123 NLRB 43 (1959). As noted previously, the Union is held to a standard of strict liability respecting compulsory dues and fees issues.

Here there is no question that the sole basis for the Union's imposition of the reinstatement fee was something other than Podchernikoff's failure to tender dues and fees required under the union-security clause as it applied to him. As Respondent Union specifically asserts above, the reinstatement fee was assessed because of his failure to pay dues after April and

---

[45]Were I to decide the issue, I would find that an employee's failure to pay union dues at a time when there is no legal obligation to pay them is protected Sec. 7 conduct.

because of his failure to seek and obtain a withdrawal card. Neither cited failure related to Podchernikoff's obligations to tender dues during the period the union-security clause bound him to do so. The reinstatement fee was therefore not assessed because of the application of the union-security clause but because of other reasons. The reinstatement fee was therefore more in the manner of a fine and was not properly collected under the compulsion of the union-security clause. Nor could Podchernikoff's failure to pay be the basis for either threatening to cause his discharge or actually attempting to do so.

Conclusion

Having found that the reinstatement fee was not properly assessable against Podchernikoff as a union-security requirement above, it follows that Respondent Union's attempts to collect the reinstatement fee from Podchernikoff on those terms as well at the threat to cause his discharge absent payment were improper and violated Section 8(b)(1)(A) and (2) of the Act.[46] Finally, the

---

[46]Having found the reinstatement fee improper and unjustified, it is unnecessary to address the two moreover theories propounded by the General Counsel as noted above. Reviewing authority may differ however. I shall therefore also address those two theories of a violation here.

The General Counsel argues that unless and until the Union had furnished Podchernikoff with an initial notification of his *Beck* rights it could not demand any fees from him whatsoever, including a reinstatement fee, howsoever valid. I reject this argument based on my determination, supra, respecting complaint par. D,7, supra, and complaint par. G,10, infra, that Respondent Union had no initial notification obligation.

The General Counsel also contends that given the *Beck* fee reductions that were in order for Podchernikoff, the notifications given Podchernikoff by the Unions failed to satisfy their obligations under *Philadelphia Sheraton* and, accordingly, Podchernikoff's discharge could not properly be sought irrespective of the general validity of a reinstatement fee. I reject this argument because the entire dispute focussed on the reinstatement fee which Podchernikoff made clear he would not pay. That being so, and assuming here the validity and propriety of assessing the reinstatement fee, Podchernikoff was in the consciously held, legally counselled, and by the date of his discharge, well known and unambiguous position of refusing to pay on principle. In such a situation it would have been futile for the Union

Union's request that Respondent Employer discharge Podchernikoff for his failure to pay the reinstatement fee, which request in fact caused his discharge, also violated Section 8(b)(1)(A) and (2) of the Act. *Spector Freight System*, supra. The General Counsel's complaint allegations G,5, 6, 7, and 8 are therefore sustained.

(b) *Complaint paragraph G,10*

Paragraph G,10 of the complaint alleges that Respondent Unions have failed to provide Podchernikoff with his initial *Beck* rights. I have found under my analysis of paragraph D,7 and other paragraphs of the complaint, supra, that the Unions had no duty to provide initial *Beck* rights to employees. Applying that finding here, I conclude that the allegation does not state a violation of the Act. Accordingly, I shall dismiss paragraph G, 10 of the complaint.

(2) The allegations against the Employer—complaint paragraphs G,8 and 9

Complaint paragraph G,8 alleges that Respondent California Saw, pursuant to the Union's demand discussed supra, discharged Podchernikoff. Paragraph G,9 alleges that by so doing Respondent California Saw has improperly encouraged its employees to join, support, or assist Respondent International, District 115, and Local 1327. Respondent Employer **[311]** is thereby alleged to have violated Section 8(a)(3) and (1) of the Act.

Given my findings, supra, that Respondent Unions' demand that Respondent Employer discharge Podchernikoff was improper and given that Respondent Employer did in fact discharge Podchernikoff pursuant to that demand, I consider here

---

to further address the dues issue or to provide a place and manner of payment. In such circumstances there is no notification obligation. *Big Rivers Electric Corp.*, 260 NLRB 329 (1982); *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117.

only the arguments of the parties respecting the liability of Respondent Employer under the Act for its conduct.

The parties start their arguments respecting Respondent Employer from the language of Section (B) of the second proviso to Section 8(a)(3) of the Act. That proviso states in part:

> Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization.
>
> (B) if he has reasonable ground for believing that membership was denied or terminated for reasons other than the failure of the employee to render the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership[.]

The General Counsel argues that an employer violates Section 8(a)(3) and (1) of the Act if it complies with a union's unlawful discharge demand at a time when it knew or had reasonable grounds to believe the discharge demand was unlawful citing *Glasgow, Inc.*, 233 NLRB 126 (1978), and *Conductron Corp.*, 183 NLRB 419, 427 (1970). The General Counsel notes that Respondent Employer knew in detail the virtually undisputed facts of Podchernikoff's situation as well as the positions of the principals of the parties involved and the legal arguments put forward by each. The General Counsel argues that Respondent Employer could have had no reasonable doubt about any operative facts relevant to the propriety of the discharge demand. Addressing the Employer's efforts to fathom the legal questions presented by the discharge demand and the defenses raised, the General Counsel asserts that the Employer's asserted ignorance of the law is simply not an excuse under these circumstances.

Counsel for Charging Party Podchernikoff adopts the General Counsel's position but also advances the Board's decision in *Kaiser Steel Corp.*, 211 NLRB 446 (1974), containing the following language of Administrative Law Judge Shapiro at 451:

> Although the cases cited at footnote 13, supra, involve instances where unions requested employee terminations and the relevant Board and court opinions speak of the fiduciary duty of unions to treat employees fairly in the application of union-security contracts, there is no reason why the same principle is not equally applicable to employers in the enforcement of such contracts. The requirement of fair dealing vis-a-vis employees covered by union shop contracts is not found in the words of the Act but, as shown by the cited case, has been engrafted by Board and court decisions. The same equitable decisions that warrant imposing such a requirement on unions also warrant its imposition on employers.

Respondent California Saw argues that it did not act precipitously or simply take the Union's assertions at face value. Rather a complete investigation taking time and involving Respondent Employer's president and legal counsel took place. Counsel for the Employer argues that the Employer acted prudently, in good faith and discharged Podchernikoff only after extensive investigation and consideration and in the reasonable belief that the discharge demand was proper. Counsel argues that the situation the Employer was presented with involved complex facts, "a wide variety of conflicting and in most cases erroneous legal theories" and "complex, conflicting and erroneous claims." (Counsel for Respondent Employer's brief at 11.) In such circumstances, argues the Employer, its good-faith error does not rise to the level of a violation of the Act.

Counsel relies heavily on *NLRB v. Zoe Chemical*, 406 F.2d 574, 583 (2d Cir.1969), denying enf. of 160 NLRB 1001 (1966):

> In determining the employer's duty in this respect, it is certainly relevant to consider both the burden which further inquiry would impose on him and the likelihood that investigation would lead to a prompt and certain resolution of his doubts.

The court in *Zoe*, 406 F.2d at fn. 16, quoted from the Board's decision in *G & H Products Corp.*, 139 NLRB 736 (1962), in which the Board held the employer was not at fault in discharg-

ing an employee as the result of an improper union demand. The Board stated at 139 NLRB at 740:

> Even if it has been incumbent upon [the employer] to investigate the validity of [the unit employee's] claim to an extension [of the due date for paying dues], as the General Counsel contends, he would have been confronted with the necessity of resolving the legal questions as to whether the extension agreement was still in force despite [the employee's] default on the required payments, and whether the receipt given by a secretary who did not have authority to modify the agreement, never the less, did modify the agreement.

The court in *Zoe*, supra at 584, concluded that the employer would have been faced with "the complex legal issues considered by the [administrative law judge] and the Board" and concluded that the employer could not be "held at his peril" to interpret the legal issues presented where the statute was ambiguous and the past case law unclear. Based on its analysis, the court found there was insufficient basis to support a finding the employer had "reasonable grounds for believing" the union's discharge request was improper.

The record is clear and I find that Respondent Employer had devoted significant time and resources to uncovering all relevant facts and discerning each party's position and argument respecting the Podchernikoff discharge demand. I further find that it in essence had all the relevant facts before it at the time in acquiesced in the request. It is clear that there was no obligation on Respondent California Saw to gather additional facts.

I further find, in agreement with Respondent Employer counsel's arguments on brief, that Respondent Employer was presented with a very broad based attack on the validity of the discharge demand from Podchernikoff's counsel raising **[312]**a very wide variety of issues and arguments of varying persuasiveness and was further confronted with a rejoining brief from the Union raising additional legal arguments. I also agree that the distilled issues and arguments, addressed in relevant part, supra, in deciding the 8(b)(1)(A) and (2) allegations concerning Podchernikoff, which were necessary for Respondent Employer

to answer in determining whether or not the demand to discharge Podchernikoff was valid, were complex, were based on ambiguous and unclear statutory and decisional language, and were not susceptible to quick or confident resolution. I further find that Respondent Employer made a reasonable and good-faith effort to decide the legal question, utilizing counsel to do so, and, as found supra, judged wrong.

The General Counsel and Charging Party Podchernikoff seem to argue that, in so far as an employer is considering legal questions rather than factual questions, strict liability is the standard to be imposed. Thus, under their analysis, the employer guessed wrong, ignorance of the law is no excuse, the employer therefore did not have reasonable grounds for believing the discharge request was proper and therefore violated Section 8(a)(3) and (1) of the Act.

Respondent California Saw seems to argue that where an employer undertakes a complete investigation, ascertains all the relevant facts, obtains the positions of the union and the employee involved, and makes good-faith efforts to penetrate the legal thicket, but its complexity leads him reasonably to err, the employer did not have reasonable grounds for believing the union's discharge demand was improper. Thus, from the Employer the argument: where all the actions of an employer in the face of a union's discharge demand are reasonable, prudent, and in good faith, ignorance of the answer to a complex and subtle legal question concerning the validity of the discharge demand is indeed an excuse and the employer's action in discharging an employee in response to an improper demand may be justified on that basis.

I find, the dicta of Judge Shapiro quoted above in *Kaiser Steel Corp.*, 211 NLRB at 451, notwithstanding, that an employer need not meet a fiduciary or strict liability standard in determining the validity of a union discharge request. There is simply no precedent for such a holding. Further the quoted language of Section 8(a)(3), supra, prohibits employers from justifying discrimination against an employee whenever it has "reasonable grounds for believing" the unions' demand was improper. The statute itself sets forth a reasonable belief standard. Given the statute and the cases cited supra, I find the standard to be applied to the Employer here is not one of simple,

strict liability. Rather the Employer must establish, bearing the burden of proof, that it acted reasonably and in good faith to (1) obtain the information reasonably believed necessary to determine the discharge demand's validity and, (2) act on the information to form a reasonable and good-faith belief that the Union's discharge demand was valid in law.

Applying that standard to the instant case, I find that Respondent California Saw made every reasonable effort to uncover all relevant facts and to consider all relevant arguments concerning the Union's request that Podchernikoff be discharged. Respondent Employer clearly met the first portion of the standard as set forth above. Having the facts before it, Respondent Employer took counsel respecting complex legal issues governed by confusing case law and developing doctrine. I find that Respondent Employer's agents had a good-faith belief that the discharge demand was proper at the time it discharged Podchernikoff. This portion of the second half of the standard set forth above is met.

Finally, and most critically to the resolution of this allegation, I also find that Respondent Saw's belief that the discharge request was proper was a reasonable one given the circumstances then pertaining, even though, as noted supra, the belief in the propriety of the discharge demand was wrong. Thus, on the facts of this case, I find that Respondent Employer's good-faith mistake that the law justified the Union's imposition of a reinstatement fee on Podchernikoff and, accordingly, justified the discharge demand that followed is a valid defense to the violation alleged. On the facts of this case, if not ignorance, then good-faith and reasonable mistake in legal analysis is an excuse.

I reach this conclusion based on the teachings of the court in *Zoe*, supra, and the Board in *G & H Products Corp.*, supra, that there are questions of sufficient legal convolution, confusion and uncertainty which an employer may not reasonably be required to correctly resolve before acting on a discharge demand. Where, as here, the employer makes a reasonable effort to answer the questions presented by the discharge request and forms a good-faith and reasonable belief that the discharge request is not illegal, that employer may act on his reasonable belief and discharge the employee without liability under the

Act, even if its reasonably reached good-faith belief in the propriety of the discharge demand is ultimately proved wrong.

It follows that Respondent Employer did not act in violation of Section 8(a)(3) and (1) of the Act in discharging Podchernikoff in response to the Union's discharge demand found violative of Section 8(b)(1)(A) and (2) supra. The General Counsel's complaint paragraphs G,8 and 9, therefore, do not sustain a violation of the Act and will be dismissed.

4. Aerojet—complaint section H

a. *Events*

Aerojet has recognized Respondent Local Lodge 946 and Respondent International as the exclusive representatives for purposes of collective bargaining of employees in its production and maintenance unit at its Sacramento, California facility. At relevant times as described below the parties have maintained collective-bargaining agreements which, since July 5, 1989, have contained union-security provisions.

On or about July 9, 1987, upon expiration of a collective-bargaining agreement, unit employees engaged in a strike against Aerojet extending into early October 1987. Dues were not assessed by Respondent Unions during the strike. No collective-bargaining agreement was in effect from July 9, 1987, to July 5, 1989,—almost 2 years.

During the contract hiatus various unit members whose names are set forth in appendix C of the complaint as updated by Joint Exhibit 17 and set forth in Appendix III of this decision ceased paying dues to Respondent Unions and became nonmembers of the Union pursuant to article I, section 14 of Respondent International's constitution which provides, inter alia, that dues delinquency for 2 months shall automatically cancel membership. Respondent Local 946 informed the Aerojet former union members, by letters sent to **[313]**them during the contract hiatus, that their membership had been canceled. Until they ceased paying their dues during the hiatus, these employees had been union members who had joined the Union and paid their initiation fees and dues after being hired by Aerojet into the unit. At the time of the expiration of the previous contract each had

been current in his on her union-security obligations to Respondent Unions.

During the strike Charging Parties Todd Bell, Annie Bravo, Dennis Bryson, John Doyle, Kahn Jones, Larry G. Lewis, David Loseth, and Frances McClain, by letters submitted to Respondent Local 946, resigned their membership in the Unions.

On July 5, 1989, a new collective-bargaining agreement between Aerojet and Respondent Unions went into effect and remained in effect through July 9, 1990. The contract contained a union-security provision requiring unit members to pay periodic dues and an initiation fee to the Union as a condition of employment.

Respondent Local's secretary-treasurer Kenneth Taylor sent identical letters dated July 14, 1989, to each of the employees named in Appendix III here and to Charging Parties Kahn Jones and Frances McClain. The letters informed unit members of the new contract quoting its union-security provisions. The letters quoted a fee schedule for "Reinstatement Fee," "Initiation Fee (New Members)," and "Monthly Dues." The letters state: "The required reinstatement fee or initiation fee is due and payable by August 7, 1989, in order to comply with the above." None of the employees named in Appendix III paid a reinstatement fee in response to this letter.

Taylor sent a letter dated July 28, 1989, to employees who resigned during the strike. This letter did not demand a reinstatement fee. The letter acknowledged each unit member's "letter of resignation" and announced the Union is "hereby notifying you of your responsibilities as an 'agency fee payer.'" The letter informed the unit members they were "still obligated to keep your dues current" and sets forth the then current dues rate for regular monthly membership dues. On August 23, 1989, Taylor sent a similar letter to Charging Party Jones.

On August 12, 1989, Charging Party Lewis wrote to Respondent Local 946 objecting to the "agency fee payer" dues and seeking a "detailed breakdown between representational and non-representational expenditures." Respondent Local 946 answered with an undated letter and a letter dated August 23, 1989. The undated letter identified itself as a "second notice" of financial obligations under the contract. The letter recited the language of the union- security agreement and informed the

addressee: "Should you fail to communicate with this office by September 1, 1989, and make the appropriate arrangements, [the union security clause] will be invoked." The final paragraph stated:

> The IAM & AW has adopted certain policies and procedures for individuals who object to the expenditure of a portion of their dues by the IAM & AW on activities not germane to collective bargaining. These policies and procedures are described in detail in the attached notice.

Respondent Unions' policy was attached to the letter. This letter was also sent in mid-August sometime after August 7, 1989, to those individuals noted above who were sent the July 14, 1989 letter from Local Lodge 946.

The second letter sent to Lewis dated August 23, 1989, noted that the first letter was sent in error and the new letter was the proper second notice. The full or regular monthly dues amount was again stated to be "due and payable."

During the months of July and August 1989, Charging Parties Bakken, Blackshere, Burnette, Fischer, Graham, Harris, Luedtke, Pecci, and Pebley, as well as other unknown unit employees, submitted identical letters to Respondent Local 946 seeking financial core status and objecting to payment of fees for nonrepresentational expenditures. During the same period Charging Parties Kaestner, Bravo, and McClain requested "core member" status. Respondent Unions did not provide objector expenditure information in response to these letters.

Upon receipt of these letters, Respondent International and Respondent Local 946 refused to recognize as objectors those employees who submitted the letters, failed to immediately reduce the dues charged to them by an amount attributable to nonrepresentational activities, and failed to provide information regarding the breakdown of expenditures by Respondent Unions between representational and nonrepresentational activities.

Neil Leudtke testified he called Local 946's office and spoke to Kenneth Taylor in late August 1989. Leudtke recalled that Taylor told him that he had received his request, but that Luedtke could not become a core member unless he was first in good standing as a member. Taylor said this would require

payment of the $300 reinstatement fee and that until such a payment was made full monthly dues would accrue. Lori Wilson testified that she asked her union steward, Timothy Boggs, early in the contract's life how to become a core member and was told she must first reinstate her membership through payment of the $300 reinstatement fee. Neither Taylor nor Biggs testified. The recollections of Leudtke and Wilson are credited.

Witness Wayne North testified he asked the Union's agent, Charles Toby, how to become a core member on or about July 14, 1989. He recalled Toby answered that he could not do so unless he became a member in good standing by paying the reinstatement fee and further suggested that it was simply not worth the trouble given the slight reduction in costs. Toby testified that he told North that, since North was not then a member, he could not resign his membership, but, that, if he wished to become a "core member," he would have to follow proper procedures. Considering the record as a whole and particularly the demeanor of the two witnesses on the issue, I credit North over Toby where their versions differ.

In late July or early August 1989, Respondent Local Lodge 946 distributed a notice to unit members. The notice addressed the subject of "union security." It quoted the language of the union-security clause in the contract, pointed out that the requirement of maintaining membership in the union could be satisfied by payment of "the required reinstatement fee, where applicable, or initiation fee for any new employees and the regular dues, fees and assessments." The notice concluded with the assertion that:

> The IAM & AW has adopted certain policies and procedures for individuals who object to the expenditure of **[314]**a portion of their dues by the IAM & AW on activities not germane to collective bargaining. These policies and procedures can be obtained by contacting the Union hall.

Pursuant to the letters sent to them by Respondent Local 946, Charging Parties Hull and Shell paid all or part of the $300 reinstatement fee to Respondent Local 946 which has thereafter refused these employees' requests for a refund of these moneys. Charging Party Sowells also paid $50 toward her reinstatement

fee but, at her request, Local 946 accepted the payment in partial satisfaction of her obligation to pay fees to Local 946.

On September 5 and 8, 1989, Respondent Local 946 hand carried two letters to Aerojet's agents. The two letters contained a corrected list of unit employees whose discharge was requested of Aerojet on the basis of a "failure to tender Union dues and/or fees lawfully levied." The unit employees listed on the two letters (Jt.Exhs. 28 and 29), included employees whose discharge was sought in whole or in part because they had failed to pay reinstatement fees. Those individuals, noted by a parenthetical number "(2)" or "(3)" after their names on Joint Exhibit 28 and those three individuals whose names appear on Joint Exhibit 29[47] are set forth in Appendix IV. The only notice to employees given by Local 946 before the discharge requests were made to the Employer are the letters described above.

On October 6, 1989, Respondent Local 946 sent identical letters to employees such as Randall Bakken, Daniel Joseph Fischer, Bert Graham, Neil Luedtke, and Theodore Pecci, who had submitted the objections described above in July and August 1989 to Local 946. The letter stated, inter alia:

> . . . we would like to be clear about your financial obligations to Local Lodge 946.
>
> Although the law permits contract provisions requiring all bargaining unit employees to pay monthly dues or fees, no one is required to be a member of our organization. You may pay the equivalent of monthly dues as an agency fee payer and you may also, as a nonmember, file a request under the IAM's policy and procedures concerning expendi-

---

[47]While the rationale the Union asserts for seeking the discharge of the three individuals named on Jt.Exh. 29 is not evident, the General Counsel has established his prima facie case by proving the Union sought these individual's discharge. The burden then shifted to the Unions to justify their actions. Given the state of the record, I find that these three should be treated as if their discharge had been sought because they failed to pay a reinstatement fee.

tures nongermane to collective bargaining to have your monthly fees limited to representational costs.

. . . .

In view of the foregoing and our desire to clear up the confusion, we have settled Grievance No. C-0025-09-89, which had sought the termination of individuals who were in arrears on their financial obligations under the new agreement, and we have agreed to renotify you of your arrearage. All previous correspondence and statements are hereby rescinded. This letter is our final and formal position and you will receive no additional notices.

Our records show you owe the following amounts:

August Dues	$29.05
September Dues	29.05
October Dues	29.05
Initiation/Reinstatement fee only where applicable.	300.00

Initiation fees will only be required of new bargaining unit employees, whether they choose to be members or agency fee payers, who have never paid an initiation fee to our organization. If you are a lapsed IAM member and you wish to rejoin our organization, a reinstatement fee of $300.00 is owed. . . . If you wish to have your monthly fees limited to representational costs, you must comply with the attached procedures.

You now have until . . . October 27, 1989, to pay the full amount indicated. Failure to comply by this date . . . will result in the Company being notified that you are not in compliance with [the union security provisions of] the collective bargaining agreement, and you will be terminated.

The following individuals were recognized as perfected objectors on October 20, 1989: Randall Bakken, George Blackshere, Douglas Branaman, Charles Burnette, Dennis Bryson, Willie Cockress, Daniel J. Fisher, Bert Graham, Gordon W. Harris, Clarence Hull, Charles Knippschild, Larry Lewis,

Neil Luedtke, Robert R. Nelson, and Theodore Pecci. Those unit members whose objectors were treated as perfected have since October 6, 1989, been treated in accordance with the Union's policy and practices as more fully described above.

b. *Analysis and conclusions*

(1) Complaint paragraphs H,4(a) and 11(b)

In complaint paragraph H,4(a) the General Counsel alleges that Respondents International and Local 946 by letters dated July 14, 1989, informed certain unit employees whose memberships had lapsed that they must pay a reinstatement fee as a condition of continued employment. Complaint paragraph H, 11(b) makes the same allegation respecting nonunion members.[48]

The General Counsel argues that the Board has concluded that a union may not lawfully impose a second initiation fee on employees who have resigned their union membership but have otherwise met their union-security obligations and never left the unit. Such a second fee would, notes the General Counsel, simply be a penalty imposed on the employee for the exercise of his or her Section 7 right to resign from the union and therefore violates Section 8(b)(1)(A) and (2) of the Act citing *Office Employees Local 2 (Washington Gas)*, 292 NLRB 117, 119 (1988), enfd. 902 F.2d 1164 (4th Cir.1990).

The General Counsel notes on brief at 117:

> **[315]**Although a financial core member who is delinquent in his monthly dues payments as required under an effective union-security clause may be required to pay a uniformly required reinstatement fee as a condition of employment [footnote omitted], the imposition of a reinstatement fee for dues arrearages that occurred while

---

[48]Complaint par. H,11(b) alleges the July 14, 1989 letters threatened nonmembers with discharge "if they failed to pay dues or reinstatement fees." As discussed elsewhere in this section, I find that the letter is fairly read to require a reinstatement fee from all employees involved herein. Thus the issue of whether the employees owed 1 month's dues is irrelevant to the violation at issue here.

> employees were not under a contractual union security clause is violative of the Act. *[Auto Workers] Local 785 (Dayton Forging)*, 281 NLRB 704, 707 (1986); *Business Machine Technicians Local #1937 (NCR Corp.)*, 235 NLRB 666, 669 (1978); *Spect[or] Freight System*, 123 NLRB 43 (1959), enfd. 273 F.2d 272 (8th Cir.1967).

The General Counsel concedes however that, under *Simmons Co.*, 150 NLRB at 712 fn. 6, if an employee desires to maintain full union membership as opposed to financial core or other agency fee status, the union may impose a reinstatement fee as a consideration of resuming union membership.

Counsel for Respondent Union seeks to distinguish the line of cases cited by the General Counsel by emphasizing that the Union here is not seeking a reinstatement fee as a penalty for members' resignations but, rather, because the individuals allowed their memberships to lapse through the means of discontinuing dues payments. Counsel's argument runs as follows.

First counsel for the Union argues that those who allow their membership to lapse under Respondent Unions' procedures noted supra get in effect 2 months' "free ride," that is, they are carried as members for 2 months without payment before being removed from the membership roles. Respondent Union notes that the Board has long allowed a union to set a reinstatement fee which is higher than an initiation fee. Counsel then argues, on brief at 113-114:

> Thus the Act sanctions "[one] classification providing one reinstatement fee for members who had left the union voluntarily and another, higher, reinstatement fee for members expelled because of dues delinquencies." *Trico Workers Union*, 246 NLRB [514, 515] (1979). Since the Board permits unions legitimately to impose higher sanctions upon those whose memberships lapse from non-payment of dues, it follows necessarily that a union can charge a reinstatement fee for those who lapse from no payment where the union cannot charge where someone asserts a Section 7 right to resign.

Respondent Union makes a second, independent argument: "The letter does not indicate that all recipients are obligated to pay either or both reinstatement, initiation fees or monthly dues." Counsel argues that "the letter was correct that each owed dues for July when the union-security clause was in effect." (Fn. omitted, Br. at 122.) Thus counsel for the Union argues the letter is simply confusing and not sufficient to sustain the General Counsel's burden of proving that the Union was in fact seeking payment of a reinstatement fee.

Initially addressing Respondent Unions' latter argument, it is useful to turn to the language of the letter at issue. The letter states in part:

> In accordance with the current Local Lodge By-Laws, the following fees apply:
>
> | | |
> |---|---|
> | Reinstatement Fee | $300.00 |
> | Initiation Fee | 200.00 (New Members) |
> | Monthly Dues | 29.05 |
>
> The required reinstatement fee or initiation fee is due and payable by August 7, 1989, in order to comply with the above.

Considering the letter and the record as a whole, I find counsel for Respondent Unions seeks sheltering confusion or ambiguity where none exists. The clear meaning to be taken by the receiver of the letter's instruction is that either a reinstatement fee or an initiation fee is due. The letter further notes that an initiation fee is for new members only. I therefore conclude that the letter unambiguously requires of lapsed members as well as resigned members the designated reinstatement fee as a condition of continued employment. The General Counsel's factual contentions are sustained.

Turning to Respondent Unions' argument respecting lapsed members, I find it fails to distinguish the General Counsel's cited cases. In *Auto Workers Local 785*, supra, the union was found to have violated Section 8(b)(1)(A) and (2) of the Act when it attempted to collect dues and a reinstatement fee from employees who were in arrears of their union dues during the

contract hiatus period. 281 NLRB at 707. In *Spector*, supra, the union sought to impose a reinstatement fee on an employee who had let his dues go into arrears and had his membership suspended while working for another employer. The Board citing *Furniture Workers Local 140 (Englander Co.)*, 109 NLRB 326 (1954), held a union may not apply the strictures of a union-security clause to punish lapsed members or to correct the union's earlier omissions to collect dues by means of an imposition of a reinstatement fee premised on an earlier loss of union membership where, in either event, the period during which the obligation accrued was outside the legitimate reach of the union-security arrangements applicable to the relevant unit. Therefore the Board found the imposition of the initiation fee and the attempt to enforce the union-security clause in this regard violated the Act. *Spector Freight*, 123 NLRB at 44-45.

Since the unit members' dues lapses occurred at a time when there was no contract with a union-security clause in effect, they were not obligated to remain members or continue payments to the Union. The "free ride" which counsel for the Union suggests arose out of the 2 months of unpaid membership prior to their removal from the Union's membership roles arose at a time when these particular "riders" could not be charged for their ride or, more accurately, were exempt from forced remuneration for their "ride" by means of the vehicle of the union-security provisions of the later signed contract. Accordingly the unit members could not thereafter be charged, in effect for that earlier action, when again subject to a union-security clause. The Unions' free ride argument respecting lapsed memberships was specifically rejected as a basis for demanding back dues and a reinstatement fee in *Railway Clerks Local 1936 (NCR Corp.)*, 229 NLRB 243, 248 (1977). Respondent International and Respondent Local Lodge 946's actions therefore violate Sec–**[316]**tion 8(b)(1)(A) of the Act. I shall therefore sustain complaint paragraphs H,4(a) and 11(b).

(2) Complaint paragraphs H,5 and 6

Complaint paragraph H,5 contends that Respondent International and Local 946 in letters dated September 5 and 8, 1989, requested the termination of the employees named in

Appendix IV. Complaint paragraph H,6 alleges that Respondent International and Local Lodge 946 took these actions: (a) because the employees identified in the letters to the Employer with the suffix (2) and (3) had failed to pay the reinstatement fee discussed supra and (b) because the employees had failed to make dues payments during periods when they were under no obligation to do so. These actions are alleged to be in violation of Section 8(b)(1)(A) and (2) of the Act.

Respecting the subgroup of employees identified in subparagraph H,6(a) as having their discharge sought because of a failure to pay a reinstatement fee, the General Counsel relies on *Spector Freight System*, 123 NLRB 43 (1959), enfd. 273 F.2d 272 (1960). Respondent Unions agree that the issue respecting the reinstatement fee dealt with under paragraph H,4, supra, is the same underlying issue as to this class of employees. I also agree.

Respondent Unions argue further respecting those employees which the letters reveal owed both a reinstatement fee and dues on brief at 117:

> With respect to [those] who have a suffix (2) after their name, however, none has paid dues in the amount of $29.05 per month. The complaint does not allege that the Local Lodge's action in seeking to have them discharged for failure to pay at least one month's dues was unlawful. As noted above the allegation is limited solely to the issue of exacting a reinstatement fee.

I reject Respondent Unions' argument. Irrespective of whether the employees were in arrears in properly owing periodic agency fees, the Union could not seek their discharge based in part on their failure to pay a reinstatement fee. Accordingly, relying on *Spector*, as discussed, supra, I find the General Counsel has sustained complaint paragraph H,6(a) and the portion of H,5 addressing those employees whose discharges were sought, in whole or in part, because of a failure to pay the reinstatement fee. Respondent Unions have thereby violated Section 8(b)(1)(A) and (2) of the Act respecting those individuals.

Turning to the remaining employees whose discharge was sought by Respondents in the two letters based on a specific assertion of a dues delinquency, but not a reinstatement fee delinquency—i.e., the employees whose names are followed by a parenthetical suffix "(1)" or "(4)" or "(5)" on Joint Exhibit 28, Respondent Unions argue the record does not establish that these individuals were not in fact delinquent in their union-security obligations other than the payment of a reinstatement fee. Complaint paragraph H,6(b) addresses these employees. It alleges that the employees named in complaint paragraph H,5 were included in the discharge letters because they had "failed to make dues payments during periods when they were under no obligation to do so."

As noted supra, I have held that once the General Counsel establishes that the Union is seeking the discharge of an employee under a claim of union-security delinquency, the burden of proof shifts to the union to justify its discharge demand. Here it might be argued that the Union has not sufficiently proven that the individuals at issue here were in fact under a dues obligation and delinquent in their payments. The General Counsel however has not made that argument. Rather his theory of a violation respecting these individuals is both limited and specific.

The General Counsel's argument on complaint paragraph H, 6(b) is quite succinct and it is possible to quote his entire theory of a violation:

> Similarly, because Respondent Unions could not demand compliance with the terms of the union-security provision by non-members until it notified them of their *Beck* rights, a demand for discharge of a non-member for non-payment of full membership dues would be unlawful. . . . Moreover, the attempt to discharge employees for non-compliance with a union-security provision when the employees have not first been clearly advised of their option to remain a non-member and pay a reduced fee violates Section 8(b)(1)(A) [of the Act]. [G.C.Br. at 120.]

I have held, supra, respecting complaint paragraph D,7 and subsequent paragraphs, that current Board law, which binds me, holds that it is not an unfair labor practice for a union under the

Act to fail to inform unit employees it represents of their statutory rights respecting union membership including their rights to remain nonmembers and/or pay reduced fees. Applying that holding here, I find the Union did not violate its duty of fair representation by declining to initially notify unit employees of their rights. Employee union-security obligations are not abrogated by such a failure to inform employees. Accordingly, the General Counsel's theory of a violation underlying complaint paragraph H,6(b) fails. Complaint paragraph H,6(b) and the portion of H,5 not encompassed in complaint paragraph H,6(a)'s allegation respecting the employees whose discharge was sought as a result of their failure to pay a reinstatement fee, will therefore be dismissed.[49]

(3) Complaint paragraphs H,7, 8(a), and (b)

Complaint paragraph H,7 alleges that at all times material prior to August 23, 1989, Respondents International and Local 946 refused to recognize the resignation from union membership of unit employee Kahn D. Jones. Complaint paragraph H,8(a) contends that all times material prior to October 1989 Respondents International and Local 946 maintained a rule prohibiting employees in the unit from resigning their union membership unless they were union members in good standing or paid a reinstatement fee. Complaint paragraph H,8(b) alleges that pursuant to the rule described in **[317]**H,8(a), the Union refused to permit certain employees in the unit to resign their union memberships including: Wayne North, Laure Wilson, and Neil Luedtke.

Charging Party Jones and McClain submitted their resignations during the strike, yet received the July 14, 1989 letter

---

[49]I specifically hold the General Counsel to his expressed theory of a violation and do not read these complaint paragraphs more broadly. Thus for example, unlike pars. M,9 and 10 of the complaint, complaint pars. H,5 and 6 do not allege *NLRB v. Hotel & Restaurant Employees Local 568 (Philadelphia Sheraton)*, 320 F.2d 254, violations of the Act. Nor do I read these complaint paragraphs as properly including an attack on efforts of the Union to obtain the discharge of employees for the failure to pay dues under any theory other than those addressed above.

quoted above. Jones was acknowledged as a resigned member on August 23, 1989, and the Union's demand that he pay a reinstatement fee was dropped. North, Wilson, and Leudtke, as noted supra, were told they had to pay the reinstatement fee before they could become core members.

The General Counsel argues that since Jones had resigned, his receipt of the July 14 letter demanding a reinstatement fee violated Section 8(b)(1)(A) of the Act and that McClain stood in similar circumstances (G.C.Br. at 118). Respondent Unions argue that paragraph H,7 is a "bizarre allegation" because the parties stipulated Jones resigned and that the Union recognized that fact on August 23, 1989.

The General Counsel argues that paragraph H,8(a) is proved by the statements made to North, Wilson, and Luedtke as they testified. Respondent Unions counsel argues that the entire sequence of events portrayed by the Government's witnesses is nonsensical, confused, and capable of misunderstanding due to the patent ambiguities arising from the semantics of resigned members joining the Union to be able to leave the Union, i.e., to achieve financial core membership.

I agree with Respondent Unions' counsel that the situation was confused. I have credited the testimony of the unit members supra. I find that it is unnecessary to make further findings respecting these conversations other than to conclude that it is clear that Respondent Lodge 946's agents gave misleading and incorrect answers to the inquiring unit employees who were at the time not union members. Thus, I have credited witness versions of conversations that these unit members were told by union agents that they must pay reinstatement fees as a precondition to becoming financial core members. Such misrepresentations to nonmembers seeking guidance concerning their obligations and rights under a union-security clause violate a union's duty of fair representation and therefore also violate Section 8(b)(1)(A) of the Act. To this extent I sustain paragraph H,8(b) of the complaint which, I find, fairly includes such an allegation.

I do not go further however. Thus, I reject the General Counsel's allegation that Respondent Local 946 in fact had a rule that reinstatement fees must be paid by lapsed members before they could be financial core members. As to this allega-

tion, the General Counsel has not met his burden of proof. I shall therefore dismiss paragraph H,8(a) of the complaint.

As to Jones, the letter sent to him on July 14, 1989, seeking a reinstatement fee may be taken as a refusal to recognize his resignation or simply as a mistake. The Unions' letter to Jones dated August 23, 1989, asserts the latter proposition. I have found the Unions' attempt to have Aerojet discharge Jones and others violated Section 8(b)(1)(A) and (2) of the Act in resolving the allegations of paragraph H,6(a) of the complaint, supra. Given that finding and the fact that Jones' resignation was specifically recognized by the Unions on August 23, 1989, I find no further violation of the Act has been proved under all the circumstances or, in the alternative, if found, would require no remedy additional to those remedies otherwise directed infra. Accordingly I shall dismiss paragraph H,7.

(4) Complaint paragraphs H,9 and 10

Complaint paragraph H,9 alleges that unit employees who were not union members: Bakken, Branaman, Harris, Hull, Knippschild, Nelson, and Pecci notified Respondents International and Local 946 of their objections to the payment of dues and fees for nonrepresentational activities between July 5 and August 4, 1989. Complaint paragraph H,10 alleges that the Unions took the following actions with respect thereto:

> (a) Refused to recognize the employees as non-members until October 20, 1989.
>
> (b) Continued to seek and accept fees equivalent to full dues as a condition of the employees' continued employment until October 20, 1989.
>
> (c) Continued to charge the named employees for nonrepresentational activities in the manner set forth in complaint paragraph D,10.

As noted, supra, these individuals sent letters to Local 946 seeking to become "core members" and, in some cases, additionally seeking unambiguous *Beck* status. Respondents sent the letters quoted above to these individuals. The General Counsel does not contend that objector status was improperly withheld or

full dues sought beyond October 20, 1989. The "D,10" overcharging allegation of complaint, paragraph H,10(c), is consistent with the General Counsel's numerous contentions of similar phrasing discussed, supra.

The General Counsel argues on brief at 123:

> Although Respondent IAM ultimately recognized most, if not all of these objectors, the failure to accord employees all their rights as a *Beck* objectors upon receipt of an objection was unlawful under Section 8(b)(1)(A) [of the Act].

I have held, supra, that there is no obligation on the part of a union under the Act to initiate the disclosure of statutory rights to employees. I have also held, supra, that when a unit member seeks information respecting such rights from a union, the union must answer fully and correctly and refrain from misleading the unit employees respecting their rights.

Here unit members did not direct their letters to the International as required by the policy, but rather sent them to the Local Lodge. The misdirected letters, however, unambiguously indicated that the unit members were either uninformed or were acting on misinformation in seeking perfected objector status from the Local. Respondents admittedly did not recognize these employees as objectors or otherwise respond to their letters directly. Local 946 did however distribute the notice described above in late July or early August and mailed to the involved individuals the October 6, 1989 letter noted above.[50]

[318]The two communications to employees referring to the Union's policy described above are not sufficient in my mind to satisfy the Union's duty of fair dealing with employees who have made an attempt to become objectors but have misdirected that effort. I specifically find that under the Act it is an unfair labor practice for a union not to *timely* respond to a unit member

---

[50]The General Counsel concedes on brief that the October 6 letter "contained all the information General Counsel believes is necessary to satisfy the *Hudson* advance notice requirement." (Br. at fn. 71, p. 119.) The October 6, 1989 letter is further considered, immediately infra, as an alleged violation of the Act under complaint par. H,11(a).

who has submitted an improperly directed *Beck* dues objection letter or other communication to his home local by a specific responding communication stating: (1) that the objection effort was misdirected and (2) specifically stating the correct name and address to which the objection should be addressed.

Respondent Unions did not meet that standard here. Accordingly, the misdirected objections will be held to have been properly filed assuming that the Union had responded to the misdirected objection and the objector had thereafter followed the Union's instructions respecting filing. Each misdirected objection sent to Local 946, if responded to by Local 946 in 1 week, would have resulted in properly directed objections mailed 1 week thereafter. The parties have stipulated to the dates of the letters sent in July and August. Adding 2 weeks to each letter's date to establish the date when the objections should have been recognized as perfected, it is clear that Respondent Unions were tardy in recognizing these individuals as objectors. Such a delay on this record is without mitigation or excuse and violates Section 8(b)(1)(A) of the Act as does Respondent Unions' attempt to collect full dues for these individuals after the date of the objections would have been filed. I therefore sustain paragraphs H,10(a) and (b) of the complaint.

On the basis of the analysis set forth under complaint paragraph D,10 and subsequent related complaint paragraphs, I also sustain paragraph H,10(c) of the complaint to the extent consistent with that analysis.

(5) Complaint paragraph H,11(a)[51]

Complaint paragraph H,11(a) alleges that the Unions by the October 6, 1989 letter noted above threatened objecting non-union member unit employees with discharge, if they failed to pay dues or initiation fees.

The General Counsel's theory of a violation for complaint paragraph H,11(a) starts with the proposition that the unit members who had filed objections, but had not as yet been recognized as objectors, should have been. Since these individuals were properly objectors, the October 6, 1989 letter which

---

[51]Complaint par. H,11(b) has been considered with par. H,4(a), supra.

seeks full dues and fees from the objectors under threat of discharge, unless they, in effect, file objector applications anew, violates the Act. Counsel for Respondent Unions argues that the letter gives each recipient notice of the Unions' policy and "faithfully gives the employees a choice of paying full dues by the end of the month, or asserting an entitlement to pay reduced dues." (R.U.Br. at 121.)

I have found, supra, under the discussion of complaint paragraph H,10, that unit employees such as Bakken as of October 6, 1989, should have been treated as perfected objectors. A perfected objector may not properly be sent a letter such as the October 6, 1989 letter, which requires a new objection application if full dues and fees are not to be paid. Such an action in effect ignores and therefore denies the fact that the unit employee should have achieved perfected status as an objector. Such a denial coupled with the demand for full dues and the threat of termination is not saved from being a violation of the Act by the letter's recitation that *Beck* procedures exist.

Accordingly, I find Respondent International and Respondent Local 946's conduct in threatening objectors with discharge unless full dues were paid violates the Act as alleged. Paragraph H,11(a) of the complaint is sustained.

(6) Complaint paragraph H,12

Complaint paragraph H,12 alleges that Respondent Unions failed to give employees "initial *Beck* rights." Since I have determined, supra, that the Union is under no obligation to disclose such rights, I shall dismiss this allegation based on my analysis and discussions supra.

5. McDonnell Douglas—complaint section I

a. *Events*

McDonnell Douglas has facilities at Huntington Beach and Torrance, California. Respondent District Lodge 720 represents collective-bargaining units of employees at both facilities. Collective-bargaining agreements are in place which state the agreements are between the Company and the "International

Association of Machinists and Aerospace Workers, represented by its Grand Lodge for and on behalf of Aeronautical and Industrial District Lodge 720." The contracts were negotiated by Respondent Local Lodge 720 and an agent of Respondent International. At relevant times the contracts have contained union- security language. Local Lodge 2024 holds the memberships of the unit employees joining Respondent Unions under the union-security clauses.

There is no dispute that Charging Parties Ruth Wright, Violet McFarland, Ronald Schmitt, and Scott Herrington have at relevant times been employed in the Huntington Beach bargaining unit or that Charging Party Richard Price has at all relevant times been employed in the Torrance bargaining unit. These five individuals have been recognized by Respondent International as objecting nonmembers for calendar year 1990 and charged reduced dues calculated under its policy and procedures as discussed, supra.

The parties agreed that the only information provided by Respondent Unions to the five employees regarding the calculation of their reduced fees for calendar year 1990 is that described above which has been provided to other objectors generally. Consistent with its policy, had any of the objecting employees elected to challenge the calculation of their fee reduction by filing a challenge as described above, they would have received the voluminous documentation previously described, including the independent arbitrator's report, and an audit of the challenging employee's District and Local Lodges would have been performed and fees adjusted as appropriate.

The amount of fees charged the five fee objector employees in 1990 was not calculated on a unit-by-unit basis and included a portion of Respondent Unions' legislative expenditures. The District and Local Lodge portion of the dues charged the objectors was based on Respondent International's survey of a sample of its District and Local Lodges conducted by Respondent International's Grand Lodge audi–**[319]**tors which survey did not include either District 720 or Local 2024.

b. *Analysis and conclusions*

The sole allegation of a violation of the Act in section I of the complaint is paragraph I,6:

> I.6 Since at least January 1990, in the manner set forth in paragraph D,10, Respondents International, District 720 and Local 2024 have charged Wright, Price, and other objecting non-members in the McDonnell Douglas Huntington Beach and Torrance units, dues and fees for non-representational activities.

The General Counsel and Respondent agree that this complaint paragraph turns on identical issues as paragraph D,10. There are a few subsidiary matters however. First Respondent Union points out that, although the complaint paragraph at issue alleges conduct occurring "[s]ince at least January 1990," the record facts address only calendar 1990 events. Therefore Respondent Union argues the paragraph should be dismissed as to all post 1990 events. I agree.

Additionally there is an apparent difference in the parties' views of the reach of the paragraph. The complaint paragraph specifically names two individuals and includes a catch all reference to "other objecting non-members." The relevant stipulation of facts, Joint Exhibit 47, the sole source of facts under section I of the complaint in the record, names five individuals as objecting unit members in 1990, yet it suggests, at paragraph 7, that these five and possibly other unnamed dues objectors had their dues determined as set forth above.

Respondent Union assumes the complaint paragraph deals only with the two named individuals. Counsel for the Union has opposed "class" allegations in other portions of the complaint and I have generally overruled such objections. The General Counsel is unclear whether he intended the complaint paragraph to encompass the five named individuals only or the five plus yet additional "others." Counsel for the General Counsel's reference to "others" in his brief, footnote 77 at 127, suggests the latter.

As discussed, supra, under the portion of this decision addressing initial matters, the cases are clear that where groups of similarly situated employees are discriminated against by a union, such as in a hiring hall setting, the General Counsel may successfully litigate a class violation and obtain a class remedy

without identifying each individual at the unfair labor practice portion of the proceedings reserving to the compliance stage specific identification of individuals. *Iron Workers Local 433 (Reynolds Electrical)*, 298 NLRB 35 (1990).

In the instant case Respondent Unions filed a motion for a more definitive statement at the beginning of the proceeding which was the subject of continuing discussion and resolution throughout the hearings. While I ultimately ruled that the General Counsel could retain class or "catch all" language in his complaint, where appropriate, I also required him to specify in the complaint all individuals of whom he had knowledge or of whom he could readily obtain knowledge from Respondent Unions so as to eliminate insofar as reasonable the open ended aspect of the allegations. As part of this procedure the General Counsel was required to issue a final amended complaint after all evidence had been taken and the other parties were afforded an opportunity to move to adduce additional evidence after the final amended complaint and answers had been filed.

While one may argue that since the final complaint paragraph I,5 names only two individuals, the General Counsel should be limited to these two, I find that is not appropriate in light of the stipulation of Respondent Unions and the General Counsel, noted above, that five individuals fall within the compass of paragraph I,6. I shall draw the line at these five, however, given the procedural history described above, precluding the General Counsel from expanding the reach of complaint paragraph I,6 beyond the individuals specifically named in the stipulation. I do so not on the basis that class pleadings are impermissible but rather on the specific grounds of the rulings and procedures which were employed in the management of this litigation. The General Counsel in paragraph I,6 had a limited readily identifiable group of employees who were listed as objecting members of the Torrance and Huntington Beach bargaining units. Presumably the stipulation reflects all the individuals in that class. Since the General Counsel never suggested difficulty existed with the procedure established in my rulings on Respondent Unions' motion for more definitive statement as to section I or paragraph I,6, he is precluded now from going beyond the individuals identified in the stipulation.

Turning to the merits as to these five individuals for calendar year 1990, I shall apply my analysis and conclusions respecting paragraph D,10 supra. The General Counsel's complaint paragraph I,6 has merit to the extent that the individuals named above for calendar year 1990 were improperly charged for extra-unit litigation expenses and for certain legislative expenses, each of which are not representational expenses for the units in which these individuals were employed. In taking these actions, as narrowly set forth, Respondent Unions violated Section 8(b)(1)(A) of the Act and complaint paragraph I,6 will be sustained. Save as specifically found Respondent did not otherwise violate the Act and the remainder of complaint paragraph I,6 is without merit and will be dismissed.

6. Lockheed Service—complaint section J

a. *Events*

At relevant times Lockheed Service has recognized Respondent International, Respondent District Lodge 120, and Respondent Local Lodge 821 as representatives of a unit of employees employed at Lockheed Service's Ontario, California facility. At relevant times the parties have maintained a contract which contains a union-security clause and language providing for "voluntary checkoff of 'uniformly required initiation or reinstatement fees and monthly dues' only."[52]

Constance Downs, Grebell K. Aila, Janis Bern, Jerry Trunnell, Norman Rydwell, Don Church, and Linda Capurro, at all times material were employees in the unit each of whom had an executed checkoff authorization on file with Lockheed Service.

Downs objected on January 23, 1989, and Respondent International recognized her objection on February 16, 1989, **[320]**and charged her the reduced rate set for objectors from on or about February 16, 1989, retroactive to January 1, 1989. Downs has since been recognized as an objector for the years

---

[52]The quoted language is from the parties' stipulation, Jt.Exh. 48, par. 3. The record does not contain the contract checkoff language.

1990 and 1991 and has been charged reduced fees established by Respondent International consistent with its policy and procedures. From on or about January 1, 1989, to on or about June 23, 1989, Respondent received moneys from Lockheed Service on behalf of Downs pursuant to Downs' checkoff authorization.

Grebell K. Aila resigned his union membership on April 27, 1990. Presumably at about that time he also sought objector status by letter to Respondent Local Lodge 823. By letter dated May 24, 1990, the financial secretary of Local Lodge 821 informed Aila that objector letters must be sent to the International and enclosed a copy of the policy. Aila then requested to pay "the full union dues by 'Financial Core' status" by letter to Respondent International dated May 30, 1990. Respondent International recognized her as a perfected objector by letter dated June 7, 1990, charged her reduced fees calculated by Respondent International under its policy and procedures and did the same for calendar year 1991.

Janice Bern resigned her union membership on March 30, 1990, and requested objector status from Local Lodge 821 sometime thereafter. By letter dated May 25, 1990, the financial secretary of Local Lodge 821 informed Bern that objector letters must be sent to the International and enclosed a copy of the policy. Bern then requested objector status by letter to the International dated June 6, 1990. Respondent International recognized her as a perfected objector by letter dated June 14, 1990. She was also recognized as an objector for the year 1991. Bern was charged reduced fees as an objector calculated by Respondent International consistent with its policy and procedures.

Don Church requested objector status by letter dated June 1, 1990. He was recognized as a perfected objector by letter dated June 14, 1990, and charged objector fees consistent with Respondent International's policy and procedures.

Linda Capurro requested objector status from Local Lodge 821 sometime before May 24, 1990. By letter dated May 24, 1990, the financial secretary of Local Lodge 821 informed Capurro that objector letters must be sent to the International and enclosed a copy of the policy. She thereafter wrote to the International seeking objector status by letter dated May 29, 1990. She was recognized as a perfected objector by letter dated

June 7, 1990, and thereafter charged fees consistent with Respondent International's policy and procedures for the remainder of 1990. Capurro was again recognized as a perfected objector for 1991 and was charged fees calculated on a like basis.

Norman Rydwell resigned his union membership on April 30, 1990, and sought objector status from Local Lodge 821 sometime thereafter. By letter dated May 25, 1990, the financial secretary of Local Lodge 821 informed Rydwell that objector letters must be sent to the International and enclosed a copy of the policy. Rydwell then requested objector status by letter to Respondent International dated June 1, 1990. He was recognized as a perfected objector by letter dated June 14, 1990, and charged reduced fees calculated under Respondent Unions' policy and procedures. He was again recognized as a perfected objector for 1991 and charged reduced fees on the same basis.

Jerry Trunnell resigned his union membership on April 25, 1990. At about that time he sent a letter to Local Lodge 821 seeking objector status. By letter dated May 24, 1990, the financial secretary of Local Lodge 821 informed Trunnell that objector letters must be sent to the International and enclosed a copy of the policy. Trunnell then requested objector status by letter to Respondent International dated May 30, 1990. The International recognized him as a perfected objector by letter dated June 7, 1990, and charged him reduced fees in accordance with its policy. He again perfected objector status in 1991 and was charged reduced fees in accordance with the policy.

b. *Analysis and conclusions*

(1) Complaint paragraph J,6

The General Counsel contends in paragraph J,6 of the complaint that notwithstanding Downs' January 16, 1989 request of the International that she be considered an objector, "Respondents International, District 120 and Local 821 continued to accept full dues which were deducted from Downs' wages and remitted to Respondent Unions by Lockheed Service pursuant to the check-off authorization form" she had signed for the period January 16 to July 1, 1989.

There is an ambiguity in the record. The parties stipulated, inter alia, at paragraph 6 of Joint Exhibit 48 that:

> Downs objected on January 23, 1989, and Respondent International recognized her objection on February 16, 1989, and charged her the reduced rate set for objectors from on or about February 16, 1989, retroactive to January 1, 1989, to present.
>
> From on or about January 1, 1989, to on or about June 23, 1989, Respondent received moneys from Lockheed Service on behalf of Downs pursuant to Downs' check-off authorization.

The stipulation states "moneys" were received by the Unions from the employer pursuant to Downs' checkoff authorization, but does not quantify the amounts. The question of fact is: were the remitted monies for "full" or objector dues amounts? The General Counsel argues on brief at 130 that there is "no dispute" that Lockheed Service continued to deduct "full membership dues" fromDowns' wages and remit them to the Union. The General Counsel notes, ibid.:

> Upon receipt of a valid *Beck* objection, such an authorization would become ineffective to permit continued deduction of full membership dues. [*Distillery Workers*] *(Capitol-Husting Co.)*, 235 NLRB 1264 (1978).

Respondent Union counsel reads the stipulation differently. He states on brief at 124:

> The facts are undisputed and set forth in a stipulation. . . . Downs had executed a dues check-off authorization that did not give the company the right to withhold non-member fees, as opposed to membership dues. In 1989 her objection was recognized on February 16, and the company continue[d] to withhold her reduced fee until June.

Respondent Unions argue from the stipulation that, as to the General Counsel's charge that full fees were accepted after

[321]Downs' objector status was perfected, "the proof does not support the allegation." Id.

Respondent Unions argue that complaint paragraph J,6 contains a second theory of violation, "that dues were accepted at all from the company." (Id.) The complaint does not contain such an allegation however. Complaint paragraph J,6 specifically alleges "full dues" were remitted. Further, the General Counsel does not press a "reduced dues" theory of a violation on brief. Accordingly it will not be further addressed here.[53]

I have considered the stipulation in evidence as Joint Exhibit 48 with the different factual conclusions advanced by the parties in mind. I am unable to conclude that the General Counsel's interpretation of the document, i.e., that it establishes that full membership dues were deducted from Downs' wages and remitted to the Union, is the only fairly inferable one or that Respondent Unions' interpretation, i.e., that only reduced or objector dues were deducted and remitted to the Union, is not equally plausible.

The General Counsel bears the burden of proof respecting the factual underpinnings of his complaint. It follows that the General Counsel's arguments based on stipulations of fact must

---

[53]The General Counsel's cited case *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 329 fn. 26 (1991), and the related case, *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367, 368 fn. 9 (1991), raise the interesting question of whether the Board will countenance checkoff clause enforcement where *Beck* is invoked in the face of a union-security clause. If I believed the General Counsel's complaint asserted a contention that even reduced dues could not have been deducted and that the General Counsel were pressing that theory, I would address the issue. However, I simply do not believe the General Counsel sought to advance this theory in the complaint paragraph here. Neither the General Counsel's argument nor the facts adduced by him support such an inference. For example the language of the contract in such cases must be closely examined. In the instant case the contract language is not in evidence let alone discussed or analyzed by the parties. I conclude the complaint allegation and the General Counsel's theory of a violation respecting it rose and fell entirely on the proposition that full or unreduced fees were deducted from Downs' wages at material times. Indeed even were the General Counsel to have argued the reduce dues theory, it would fail on this record for want of a sufficient complaint allegation to join the issue.

meet that same burden. Finding two opposing assertions of fact based on the same ambiguous joint stipulations of fact, and finding them equally arguable, I reject the position of the General Counsel who carries the burden of proof and accept the position of Respondent Unions who do not. Accordingly, I find the record does not establish that Downs had "full dues" deducted by her employer and remitted to the Union after her objector status was recognized on February 16, 1989.[54]

Given this finding, I do not find that the General Counsel's factual predicate to his theory of a violation has been sustained. Accordingly, I shall dismiss paragraph J,6 of the complaint.[55]

(2) Complaint paragraphs J,7 and 12

Complaint paragraph J,7 alleges:

> Since at least January 16, 1989, in the manner set forth in paragraph D,10, Respondents International, District 120 and Local 821 have charged Downs and other objecting non-members in the Lockheed Service unit, dues and fees for non-representational activities.

Complaint paragraph J,12 alleges:

---

[54]The stipulation establishes the date of Downs' objector letter as January 23, 1989. Given mailing and processing time, it was not unreasonable for Respondent International to take until February 16, 1989, to grant her perfected objector status. I take the period in issue then to commence on or soon after February 16, 1989.

[55] I find, infra, that the objector fees paid by Downs, like all objector fees paid by objectors in calendar years 1989, 1990, and 1991, included improper fees for expenditures for legislative expenses and for extra unit litigation expenses. The collection of these sums from Downs violated the Act. Their remittance by checkoff deduction was therefore also improper. The manner in which the complaint was drafted however, see for example complaint par. J,7, discussed supra, as well as the way the case was argued at trial and on brief, convince me that the General Counsel did not intend to include these improperly collected amounts in the contentions of par. J,6. Accordingly, I have not addressed those matters here. See the further treatment of the matter immediately below.

> Since at least June 7, 1990, in the manner set forth above in paragraph D,10, Respondents International and Local 821 have charged Rydwell, Alia, Capurro, Trunnell, Bern and other objecting non-members in the Lockheed Service unit, dues and fees for non-representational activities.

The parties recognize that the issue here is similar to that raised by complaint paragraph D,10. I have set forth the arguments of the parties as well as my analysis and conclusions, supra. I reach the same result here. Thus I conclude that each member of the Lockheed Service unit identified in the stipulation as having achieved perfected objector status was improperly charged for legislative expenditures and extra unit litigation expenses throughout his or her time as an objector. Such collections violated Section 8(b)(1)(A) of the Act. Since all three Respondents named here benefited from the overcharges, each has violated the Act. To that specific, limited extent, I find complaint paragraphs J,7 and 12 to be meritorious. The individuals involved under paragraphs J,7 and 12 are indicated below with the periods of improper billing set forth after their names.

> Downs—February 16, 1989, to end of 1991
> Aila—June 7, 1990, to end of 1991
> Bern—June 14, 1990, to end of 1991
> Church—June 14, 1990, to end of 1990
> Capurro—June 7, 1990, to end of 1991
> Rydwell—June 1, 1990, to end of 1991
> Trunnell—June 7, 1990, to end of 1991

(3) Complaint paragraphs J,9 and 13

Complaint paragraph J,9 and its subparagraphs (a), (b), and (c) allege that Respondent Unions failed to give unit members Bern, Aila, Trunnell, Rydwell, Capurro, and Church notice of their *Beck* rights upon their resignation from the Union. Complaint paragraph J,13 repeats the allegation as to Rydwell.

Respondent Unions argue that each of the individuals at issue received a copy of the December 1989 issue of the Machinist magazine as a unit member. Each was also sent a copy

of the Union's policy by letter from District Lodge 821 **[322]**dated May 24 or 25, 1990. Respondent Unions further point out that each employee thereafter submitted a properly directed objector request and each was accepted as a perfected objector in response to his or her letter. The General Counsel argues that the policy does not clearly set forth a window period for "new nonmembers" and the failure to provide a "clear statement of the rights conferred by such [newly resigned union membership] status and a new opportunity to object," General Counsel's brief at 131 violates Section 8(b)(1)(A) of the Act.

I have held, supra, in considering complaint paragraph D,7 that Respondent Union had no obligation to notify unit employees of their *Beck* rights or of the Union's policies respecting *Beck* rights, absent inquiry. I also held in considering subparagraph D,7(c) that *Beck* required that dues objectors could not be prohibited from filing dues objections for at least a reasonable period after resigning from the Union.

The instant allegations present a different issue. Here the employees were not simply denied any initial disclosure of or explanation regarding their *Beck* rights or the Union's policy with respect thereto—a circumstance I have found not improper, supra. Rather, they were specifically told or were permitted to draw the fair inference, through the May 1990 letters and the accompanying reference to the enclosed policy, that they did not have the right to file an objection until the following January. Had the employees read the May letters' reference to the "window period allowed by the IAM notice" and then perused the policy for a recitation of the rights of a newly resigned union member to file a dues objector application other than in January, they would have been mislead and their rights curtailed. It is reasonable to believe, and I find, that the employees so read the communication.

The Union's letters to employees with their reference to an incomplete and legally inadequate recitation of *Beck* rights rises to the level, in my view, of a misrepresentation of union member resignees' *Beck* rights. Misrepresentation of a unit members statutory rights by the union which represents the unit member is a violation of the union's duty to deal fairly with the employee. Thus a union which either misstates the employee's rights or informs the employee of rights which are misleadingly

incomplete—as is the case here where the policy was sent to newly resigned union members—violates the Act irrespective of my earlier conclusion that under Board law there is no obligation to inform newly resigned union members of their rights to immediately file dues objector requests irrespective of the limitations of the January window period of the Union's policy.

Respondent Local Lodge 821's agent sent the letters including copies of the policy to the individuals at issue. Having mislead employees, Respondent Local Lodge 821 was obligated to correct the false impressions of union resigner's *Beck* rights and, indeed, the rights afforded union resignees under union practice.[56] Having failed to do so, it violated Section 8(b)(1)(A) of the Act.

Respondent International publishes, maintains, and holds out its policy as a recitation of employee rights. The policy was not applied to these employees as written inasmuch as the union member resignees here were allowed to file dues objector applications outside the policy's seemingly applicable January window period. As specifically found, supra, under paragraph D, 7(c) respecting the "provision" of additional time to file objections, Respondent International's policy fails to provide required *Beck* rights. Respondent International is therefore also culpable and has violated Section 8(b)(1)(A) of the Act by holding out its policy in the manner found here to the detriment of former union member employees who have recently resigned.

The complaint allegations in paragraphs J,9 and 13 as to Respondent International and Respondent Local Lodge 821 are therefore sustained. I have found these obligations arose as a result of the role of the two entities in affirmatively misleading union resigner unit members respecting their rights to file timely

---

[56]The Union argues on Br. at 127 fn. 61: "The Local violated no duty it owed to these employees by accurately informing them how and where to proceed to become objectors." Objectors were told in the letter and the enclosed policy, by fair inference, that they had no right to file a dues objector application until the following January. I have found, supra, such a limitation is a violation of the Act. The statement was therefore inaccurate, misleading and a violation of the duty to fairly represent employees by at least not giving them false and misleading information about their statutory rights.

dues objector applications outside the policy's January window period. Respondent District Lodge 120 had no role in that affirmative conduct. Accordingly, I find it has not violated the Act as alleged and I shall dismiss the complaint paragraphs as to it.

(4) Complaint paragraph J,10(b)

Complaint paragraph J,10(a) recites that on or about May 21, 1990, Bern, Trunnell, Rydwell, Aila, and Capurro notified Respondent Local 821 that they were resigning their union membership and objecting to the payment of fees and dues for nonrepresentational activities. Paragraph J,10(b) alleges that on or about May 24, 1990, Respondent Local 821 refused to recognize the employees as objecting nonmembers because the objections described in paragraph J,10(a) had not been sent to Respondent International.

There is no dispute that Local 821 on May 24 and 25, 1990, rejected each of the individuals named in the complaint's dues objection application as misdirected to the Local rather than the International. The General Counsel obliquely addresses the allegation by suggesting that because Respondent Local 821 failed to notify the individuals who attempted to file objections with it of their *Beck* rights, they must be deemed objectors as of the date they resigned. Given this position, the General Counsel further argues, on brief at 132: "Thus, Respondent Unions' initial rejection of their objections, on May 24 and 25, as untimely was a further interference with their rights as nonmembers in violation of Section 8(b)(1)(A) [of the Act]." Respondent Unions argue that the complaint paragraph simply fails to state a claim since it was correct that objections must be filed with the International.

I have found Local 821's May letters violative of the Act immediately above because I found they were misleading respecting union member resignees' rights to submit out of time dues objector applications.[57] The letters were, however, as

---

[57]The remedy for that violation, set forth in the remedy section of this decision, infra, addresses much of what the General Counsel seeks by way of remedy for the violation alleged in the instant complaint paragraph.

Respondent Union counsel argues, perfectly correct in re-[323]jecting the dues objector letters sent to the Local for the simple reason of their misdirection. They may not be faulted therefore for that reason. Accordingly I find that the General Counsel has not sustained paragraph J,10(b) of the complaint and it shall be dismissed.

7. Lockheed Missiles—complaint Section K

a. *Events*

Lockheed Missiles has at all times material had a multiplant collective-bargaining agreement covering, inter alia, its Sunnyvale and Santa Cruz, California facilities. The contract on its face recognizes Respondent International, Respondent District 508, and Respondent Local 2230 as representatives of certain unit employees (Local 2230 represented employees) and Respondent International, Respondent District 508, and Respondent Local 2227 as representatives of certain other unit employees (Local 2227 represented employees).

At relevant times the following individuals have been Local 2230 represented employees at the Santa Cruz facility: Elizabeth S. Morehouse, Ronaele Findley, Melville James Arnot, James K. Humphreys, Leonard K. Kuhnlein, Denis McMahon, Donna M. Mendoza, Randall Sparks, and James M. Sumter. These employees had executed dues-checkoff authorizations on file with the Employer as of January 1, 1990. On January 3, 1990, Morehouse sent to Respondent International, Respondent District 508, and Respondent Local 2230 identical letters from each of these employees resigning membership and seeking *Beck* dues objector status. The letters were mailed certified mail, but were all contained in a single envelope. Hand delivered copies were sent to the Employer on January 5, 1990.

By identical letters to each employee dated January 10, 1990, Respondent International noted each employees' resignation from the Union but indicated their dues objections were not proper because they were not "in the form of an individually sent certified letter." The letters informed the employees: "If we receive a perfected objection from you prior to the end of the window period, you will become an objector." Respondent did

not provide any further information to these employees nor reduce their dues. Respondent Unions accepted fees equal to full membership dues through existing checkoff authorization forms from these individuals through calendar year 1990.

At relevant times the following individuals have been Local 2227 represented employees: Paul Sjotvedt, Randy D. Adams, and Leach S. Harbison. As of January 1, 1990, each of these employees had an executed dues-checkoff authorization on file with the Employer under the terms of the contract. The employees submitted dues objector applications in January 1990 which were accepted by Respondent International by letters dated February 2, 1990. These employee were then treated in accordance with the policy and procedures described, supra.

In January 1991 Morehouse, Humphreys, McMahon, Sparks, Sjotvedt, and Harbison became perfected objectors for calendar year 1991 and were thereafter treated in accordance with the policy and procedures as discussed, supra. Findley, Arnot, Kuhnlein, Mendoza, Sumpter, and Adams did not submit objections in the January 1991 window period.

b. *Analysis and conclusions*

(1) Complaint paragraphs K,4 and 5

The General Counsel alleges in complaint paragraph K,4(a) that employees Morehouse, Findley, Arnot, Humpreys, Kuhnlein, McMahon, Mendoza, Sparks, and Sumpter sent identical letters dated January 3, 1990, in a single envelope to Respondent International resigning from the Union and seeking objector status. Complaint paragraph K,4(b) alleges that Respondent International responded accepting the resignations, but denying the employees' objector status. Complaint paragraph K,5 alleges that notwithstanding the Local 2230 represented employees' timely dues objector applications for calendar 1990, they were not afforded perfected dues objector status and were required to pay fees equivalent to full union dues.

The "individual envelope" requirement of the policy at issue here was evaluated under complaint paragraph D,8(a), supra, and found improper and invalid. Respondent International, Respondent Local 2230, and Respondent District Lodge 508—each of

whom shared portions of the illegally unreduced fees—therefore violated Section 8(b)(1)(A) in improperly restricting the form and manner of perfecting dues objector status and in collecting unreduced fees as a consequence of improperly denying dues objection applications.[58] I therefore sustain complaint paragraphs K,4(b) and 5.

(2) Complaint paragraph K,7

The General Counsel alleges in complaint paragraph K,7 that in treating the three Local 2227 represented employees as objectors for calendar year 1990 Respondent Unions charged the employees for nonrepresentational activities as set forth in complaint paragraph D,10.

Consistent with my findings, supra, respecting paragraph D,10 and various other paragraphs of the complaint, I find Respondent International, Respondent Local 2227, and Respondent District 508—who shared in the excessive fees—violated Section 8(b)(1)(A) of the Act by charging the perfected dues objectors Sjotvedt, Williams, and Harbison for calendar year 1990 and Sjotvedt and Harbison for calendar year 1991[59] for legislative expenses and for litigation expenses not incurred by the specific bargaining unit involved. To this extent, complaint paragraph K,7 is sustained.

8. General Dynamics, Ft. Worth Division—complaint section L

a. *Events*

---

[58]Although the stipulation of the parties addressing sec. K of the complaint contains factual assertions respecting Local 2230 represented employees for calendar year 1991, there is no paragraph of the complaint alleging improper conduct with respect to that group of employees for calendar year 1991, nor is there a "paragraph D,10 reference" complaint paragraph, such as K,7 discussed infra, for employees represented by Local 2330.

[59]The parties stipulation does not address Williams' circumstances in 1991 nor does the record otherwise provide information on the question.

General Dynamics, Ft. Worth Division has at all times material had a collective-bargainingagreement with Respondent [**324**]International and District Lodge 776, a labor organization not alleged to have violated the Act in the complaint, covering a unit of employees. The collective-bargaining agreement contains union-security language.

At relevant times Kenneth Lee Stephens was a member of the unit who had never joined the Union. He regularly paid fees as a nonmember and received the Union's December 1990 issue of the Machinist magazine which contained the Union's policy. He did not read the issue however. On or about January 8, 1991, Stephens wrote to the president of District 776 in Fort Worth, Texas, that he objected to payment of fees for nonrepresentational activities.

District Lodge 776 initially responded to Stephens' letter through its Business Representative Norman Huddleston by meeting with Stephens on or about February 8 and 27, 1991. Huddleston encouraged Stephens to join the Union without success. By letter dated March 7, 1991, Lane responded to Stephens informing him that his letter of January 18, 1991, was ineffective. The letter concluded: "any such request(s) as you have made would have to be made to the International Union in Washington, D.C."

Stephens by letter dated May 24, 1991, wrote to the International seeking dues objector status. The International responded by letter dated May 29, 1991, informing him that his letter was not postmarked or received in the appropriate 30-day period and was therefore out of time. Stephens was not afforded perfected objector status.

b. *Analysis and conclusions*

Paragraph L,4 of the complaint alleges that since about January 8, 1991, Respondent International has:

> (a) Failed and refused to recognize Stephens as an objecting non-member.

(b) Continued to seek and accept fees equivalent to full dues from Stephens as a condition of his continued employment by General Dynamics at Ft. Worth.

(c) Continued to charge Stephens for non-representational activities.

The complaint paragraphs factual allegations are not disputed. The only issue is whether Respondent International was bound under the circumstances to honor Stephen's out of time objection application. The General Counsel makes two arguments. First he argues that the December 1990 Machinist magazine issue was not adequate notice of Respondent Unions' policy and therefore the window period could not be a basis for denying Stephens' application for objector status. This is a reprise of argument with respect to complaint paragraph D,7(c) addressed, supra.

I held in deciding the notice obligation issue that current Board law does not require a labor organization to inform employees of their statutory rights. Therefore I did not address the General Counsel's argument that the December issues of the Machinist magazine were inadequate notice of the Union's policy because they did not have a cover notification of the appearance of the policy within the magazine issue. Applying that holding here, I find that there was no obligation to inform Stephens of his *Beck* rights and, therefore, Respondent International was not prevented for that reason from asserting the window period—a limitation on the filing of dues objector applications which the General Counsel does not attack as it is applied to employees who are neither new hires or recent union member resignees—to deny the application.

The General Counsel's second argument is that Stephens timely submitted an unambiguous dues objector application to the District Lodge and that he should have been advised by the International—not the District Lodge which is not named as a wrong doer in the complaint, of the proper person and location to direct his application. The General Counsel argues on brief at 136-137:

Rather than advise him at that time that his objection should be sent to Respondent IAM, the Union waited until after its

window period had expired to advise him of this requirement.[86] Respondent IAM then rejected his objection when Stephens attempted to comply with the procedure. Respondent Union's conduct toward Stephens clearly evidenced a lack of good faith and arbitrariness which is the hallmark of a violation of the duty of fair representation. Elemental notions of fairness dictate that Respondent Unions should have advised Stephens immediately upon receipt of his objection regarding the proper procedure. Instead, a representative of Respondent Unions encouraged him to join the Union, waiting until it was too late to tell him how to perfect his objection.

---

[86] Business Representatives, such as Huddleston, clearly are agents of Respondent IAM because of the degree of supervision and control over them which Respondent IAM has and the fact that they are paid jointly by the District Lodge and Respondent IAM. See *Machinists District 91 (Pratt & Whitney)*, 278 NLRB 39 at 46 (1986).

The General Counsel also cites the Board decision of *Auto Workers Local 1384 (Ex-Cell-O Corp.)*, 227 NLRB at 1048-1049, in support of his contentions.

Respondent Unions argue at footnote 62 at 131-132 of brief:

> It could be argued that the Local Lodge erred in not immediately informing Stephens upon receipt of his January 18th letter that he had to submit his objection to the International Union, even though Stephens already had been put on notice of this fact by receipt of the December 1990 *Machinist*. However, the General Counsel has dismissed charges filed by Stephens filed against the Local Lodge. The instant complaint (and the charge upon which it is based) is directed solely at the International. Since the International Union had nothing to do with the manner in which the local lodge dealt with Stephens' correspondence, the only relevant facts here are that the International rejected an out-of-time objection by a non-member who had received his December *Machinist*, that is, the national allegation found at paragraph D,7(c) of the Complaint.

I agree with the General Counsel that it is improper for a labor organization to in effect take the conscious decision to "sit" on a misdirected dues objector application until the window period for timely submission has passed. I also agree with Respondent Union that the complaint names only Respondent Union as the wrongdoer here. District Lodge Presi-[325]dent Lane's conduct is not attributable to Respondent International.

The only conduct arguably connecting the International to these early events is the stipulated action of Business Representative Norman Huddleston who on or about February 8 and 27, 1991, met with Stephens and encouraged him to join the Union. This conduct is inadequate to support a finding of temporizing misconduct by the International for several reasons. The first is simply one of consideration of the series of events. Any action by an agent of Respondent International which occurred in February, after the January window period closed, is irrelevant to the contention that Stephens was prevented from filing a timely application in January. There is no evidence that Huddleston or any other even argued agent of Respondent International had any role in this matter until February 8, 1991.

Second, there is no evidence that Huddleston acted as described with knowledge the Stephens had filed a misdirected dues objection. The stipulation states that Huddleston's actions in February were the response of District Lodge 776 to Stephens' letter of January 18, 1991. The letter was addressed to Pat Lane, president of District Lodge 776. There is no evidence that Huddleston was given the specifics of the letter. The stipulation does not fairly support such an inference. Nor does the stipulation's description of Huddleston's actions—encouraging Stephens to join the Union—suggest Huddleston knew of the misdirected dues objector application. As the judge said in the General Counsel's cited case, *Machinists District 91*, supra, 227 NLRB at 46: "knowledge of the facts" by the business representative is necessary before construing his actions as approving the conduct of the District Lodge. The General Counsel has chosen to rest his factual case on a stipulation which simply does not connect Huddleston or any other agent of Respondent International with the January 18 letter. Therefore I do not find that Respondent International may bear any responsibility for the

delay of the District Lodge in responding to Stephens' January letter.

Based on all the above I find the General Counsel has failed to establish that the International improperly denied Stephens dues objector status for calendar year 1991. Accordingly complaint paragraph L,4 and each of its subparagraphs is without merit and will be dismissed. Since this is the only paragraph of section L of the complaint alleging a violation of the Act, the section in its entirety is dismissed. Respondent International therefore has not violated the Act with respect to section L of the complaint. District Lodge 776 was not alleged to have violated the Act.

9. Boeing—complaint section M

a. *Events*

At all times material Respondent International and Respondent District 751 have been jointly designated as the exclusive representatives of a unit of employees at Boeing's Seattle, Washington area facilities. Setting aside the period of a strike discussed below, the parties have maintained a series of collective-bargaining agreements covering unit employees, which contracts have contained union-security language.

A contract hiatus and strike occurred in the unit from on or about October 3, 1989, to on or about November 22, 1989. During this period approximately 2700 employees in the unit resigned their union membership and returned to work across Respondent International and District 751's picket lines (the union resignees). A new collective-bargaining agreement containing a union-security provision was signed on or about November 22, 1989. As of that time Respondents International and District 751 had not advised the union resignees and other nonmembers of the Union in the unit of their initial *Beck* rights save through the Machinist magazine's December issues as discussed in greater detail, infra.

During the first 30 days of the new contract some 400 nonunion member unit employees sent letters to District Lodge 751 seeking to become fee objectors. Those individuals received letters dated either January 8, 11, or 22, 1990, directing the

individuals to follow the policy procedures outlined in the December 1989 issue of the Machinist magazine. These individuals were charged the full amount of fees for the month of December 1989.

During January 1990 approximately 120 individuals who were nonunion member unit employees perfected their objector status consistent with the policy. These objectors were thereafter charged fees in accordance with the policy as discussed, supra.

On or about January 4, 19, and 24, 1990, respectively, Respondent District Lodge delivered to Boeing letters identifying certain unit members as not in compliance with the union-security clause of the agreement.[60] The letters requested the employees' discharge on their 36th day of employment, save for the January 24, 1990 letter which requested the termination of the listed individuals on February 1, 1990. The Union did not first notify the employees listed on these letters of their obligation to make required payments or face discharge. Boeing in turn advised the employees to make either membership or agency fee payments to the Union, which the employees without exception did. No discharges therefore resulted from these events.

Boeing unit member John LaPorta by letter dated January 23, 1990, and delivered January 25, 1990, by U.S. Postal Service Express Mail with return receipt requested applied to be a dues objector. Respondent International rejected the application by letter dated January 26, 1990, as not having been sent by certified mail. The International accepted LaPorta's letter when he resubmitted it by certified mail.

Boeing unit employee F.R. Frayo submitted a handprinted dues objection application by certified mail in January 1990 the signature of which was likewise in handwritten block letter printing. By letter dated February 2, 1990, the International rejected the application as "unsigned." By letter dated February 7, 1990, Frayo protested the printed name on his earlier letter was his signature. On February 13, 1990, the International accepted the application.

Gary L. Davis was a unit employee and union member until he resigned his membership on October 26, 1989. He testified

---

[60]The employees are set forth in App. VI, infra.

that, when the strike was over, his supervisor told him to go down to the hall and rejoin the Union. He went to the union hall and asked "how much it was going to cost just to rejoin, so [he] satisfied the requirement to work at Boeing." He was simply told the amount— approximately $90, which he paid. Later learning of his right to pay only an agency fee, Davis attempted on various occasions to ob–**[326]**tain a refund. District 751 formally rejected his request for a refund by letter dated March 12, 1990.

b. *Analysis and conclusions*[61]

(1) Complaint paragraph M,4

The General Counsel alleges that Respondent International and Respondent District 751 violated Section 8(b)(1)(A) of the Act by failing to advise those employees who had resigned their union membership and crossed the picket line to work during the strike of their initial *Beck* rights as of the date of the effective date of the new agreement, on or about November 22, 1989. The allegation raises issues similar to those addressed in resolving complaint paragraph D,7(b). It also raises a variety of factual issues concerning whether specific individuals actually received a copy of the December 1988 or December 1989 Machinist and whether those individuals read or should have read the policy contained therein. It also raises the issues considered in resolving complaint paragraph D,7(a) discussed, supra.

I held in finding complaint paragraphs D,7(a) and (b) without merit, supra, that current Board law does not require a labor organization to provide notice to employees of their various statutory rights to limit their relationship to a labor organization under a union-security obligation to financial core

---

[61]The stipulated facts set forth in part above address events which fall under the complaint paragraphs of sec. D dealt with supra, for example the rejection of dues objector applications sent by other than certified mail. Only the allegations of sec. M of the complaint are addressed herein. The facts relevant to the remedy of other sections of the complaint will be addressed in the remedy section of this decision, infra, or in the compliance stage of the proceedings.

membership or to invoke Section 19 of the Act on religious grounds. I further held that *Beck* rights are similar to those statutory rights and that current Board law does not require initial disclosure of any statutory right including *Beck* rights. In reaching this conclusion I held that current Supreme Court and court of appeal decisions under public sector statutes and under the Railway Labor Act are not so clearly controlling of Board doctrine for an administrative law judge to declare current Board law reversed or controlled by their holdings. Thus I held a labor organization under the National Labor Relations Act does not commit an unfair labor practice nor breach its Board established and defined duty of fair representation under Sections 7 and 8 of the Act by failing to notify unit employees of their statutory rights respecting union security and agency shop contract clauses—including *Beck* rights under those agreements.

Applying that finding here, Respondent International and Respondent District 751 were not obligated to inform unit members of their *Beck* rights. Accordingly, they have not violated the Act by failing to do so here. Complaint paragraph M,4 is therefore without merit and will be dismissed. Having made this finding it is unnecessary to determine the various issues respecting the adequacy of notice raised by the parties.

(2) Complaint paragraph M,5

Complaint paragraph M,5 alleges that Respondent District 751 required Gary L. Davis to pay a reinitiation fee and rejoin Respondent Unions as a condition of employment at Boeing. The facts are not in essential dispute and are set out above. Davis' testimony is not contradicted and is credited.

The General Counsel argues that the secretary advising Davis at the union hall was an agent of Respondent 751, citing *Communications Workers Local 6012 (Southwestern Bell)*, 275 NLRB 1499, 1502 (1985), and cases cited therein. The General Counsel argues, on brief at 144:

> In the instant case, although Davis may not have been explicitly told by Respondent Unions representatives that he was required to pay the reinstatement fee, Respondent

Unions' failure to adequately advise him, at the conclusion of the strike, regarding his options was clearly unlawful.

Respondent Unions argue that they did not misadvise Davis respecting his obligation to join the union. Indeed, they note Davis' correspondence to the union admits his rejoining the union was "in error" and as something he wished "now to correct." Further, Respondent Unions argue, as above, that they have no obligation to inform unit members of their statutory rights and, in the instant case, could fairly believe the former member was rejoining on his own initiative. Thus they argue it is not improper for unions to collect such fees from those who voluntarily wish to rejoin the union as full members.

I have found, supra, that unions have no duty to inform employees of *Beck* rights or of their rights not to become agency fee payers. Further I find that Davis was in no manner mislead by the Union or otherwise tricked into rejoining the Union. Accordingly, I find the Unions did not require Davis to rejoin the Union. Therefore the General Counsel's complaint paragraph M,5 is not sustained and shall be dismissed.

(3) Complaint paragraph M,6

Complaint paragraph M,6 alleges that Respondent District Lodge 751 has denied Davis' request for a refund of his reinitiation fee since about December 4, 1989. Again the facts are not in essential dispute.

The General Counsel argues initially, on brief at 144, that "Respondent Unions could not rely on its own unlawful conduct to take advantage of Davis' 'ignorance' and refuse his request for a refund." This argument depended on the merits of paragraph M,5 of the complaint, dismissed above. This argument therefore fails based on the analysis, supra.

The General Counsel also argues that Respondent Unions were placed on immediate notice that Davis had mistakenly paid his reinstatement and that he did not desire full membership in the Union. Failure to refund his fee in such a circumstance, argues the General Counsel, violates Section 8(b)(1)(A) of the Act.

Respondent Unions argue that uncontested testimony establishes that the Union has a consistent policy of not allowing refunds of reinstatement fees when an employee simply changes his mind. Counsel for the Union further notes that the General Counsel does not challenge the policy. Thus, argues the Union, the Union's simply confronted a situation where an employee, apparently voluntarily, rejoined the Union paying a normal reinstatement fee and, thereafter, changed his mind and attempted to "correct his error." In all such situations including the instant situation Respondent **[327]** Union applies an unchallenged rule and declines to refund fees.

I find Respondent Unions' arguments persuasive here and find the General Counsel's allegations in paragraph M,6 of the complaint, like paragraph M,5, without merit. I reach this conclusion because I find no basis for holding the Union responsible for Davis' rejoining the Union and, further, no basis for requiring it to deviate from its consistently followed policy of refusing to issue refunds for fees paid to join the Union. Accordingly, I shall dismiss complaint paragraph M,6.

(4) Complaint paragraph M,8

Complaint paragraph M,8 alleges that upon receiving the objections filed by certain unit employees with District 751 during the period of on or about November 22 through December 22, 1989, Respondents International and District 751:

> (a) Refused to recognize the employees as non-members.
>
> (b) Continued to seek and accept fees equivalent to full dues as a condition of the employees' continued employment at Boeing.
>
> (c) Continued to charge the employees for non-representational expenses.

The complaint alleges this conduct violates Section 8(b)(1)(A) of the Act.

The facts are not in dispute. Certain unit members during the period alleged above filed dues objector letters with District 751. Those individuals received letters dated January 8, 11, and

22 directing them to follow the Policy procedures outlined in the December 1989 issue of the Machinist newspaper.

The General Counsel argues that these individuals were entitled to a window period per the language of the Union's policy for new hires: "during the first 30 days in which an objector is required to pay fees to the Union." The General Counsel notes on brief at 142 that under the union-security clause of the November 22, 1989 contract: "For such employees, the period between November 22 and December 22 was 'the first 30 days' in which, as objectors, they were required to pay fees to the Union." Thus argues the General Counsel these objections were timely.

The General Counsel addresses the fact that the objections were not sent to the correct location on brief at 142:

> Respondent Unions may not rely on the fact that these objections were submitted to Respondent District 751 rather than Respondent IAM as justifying its rejection of them. As noted above, Respondent Unions had not notified the resignees, at the proper time, of the existence of Respondent IAM's procedures and its requirements imposed on employees wishing to assert their rights. Moreover, even when responding to these objections, Respondent District 751 did not bother to specifically advise these objectors that they must mail their objection[s] to Respondent IAM. Reference to a newsletter which they probably did not receive or, if they received it, would probably not have read or retained, is insufficient to appraise these employees of the procedures they must follow to perfect their objection.

Respondent Union argues that this allegation is similar to paragraph D,7 of the complaint, considered supra, with the single difference that the new window period is triggered by the "fact that theirs is a new contract, or, arguably, a short hiatus between contracts."

I do not find the dispute respecting the existence or not of a window period other than January for these employees is material to resolving the merits of the allegation. This is so because, timely or not, the objections filed with District 751

during the period November 22 to December 22, 1989, were clearly misdirected and were thus invalid.[62]

Given this threshold finding, the single issue remaining is whether or not District 751, having received these misdirected objections, satisfied its duty of fair representation to those employees by its subsequent actions, described above, in referring them to the December issue of the Machinist.

The conduct of District 751 has two aspects. First, were the letters sent to the employees in response to their misdirected objections timely? In other words, on the facts of this case, were the letters from District 751 sent sufficiently prompt so that an employee receiving the letter in due course could still perfect his or her objection. Applying that standard I find that the letters were timely. Thus all letters responding to the employee misdirected objections were sent on or before January 22, 1989. There was ample time for these letters to be delivered to employees and the employees to place their correctly addressed objection letter to the International in the mail to be postmarked within the January window period. Thus the Union did not sit on its hands and delay answering the employees' misdirected objections until a timely objection could no longer be filed.

Second, given that District 751 knew these individuals wished to file objections, did the responses of District 751 meet the Union's obligations to engage in "fair dealing" with employees under the circumstances presented? Clearly, referring the employees to the language of the policy was proper. Had a copy of the policy been included in each letter, no issue of fair dealing would exist.[63] District 751's letters, however, simply referred to

---

[62]Consistent with my findings supra, I find no obligation on the part of a labor organization to notify unit employees, absent inquiry, of the existence of *Beck* rights or the specific requirements for perfecting them. Therefore the failure of the Union to initially inform these employees of the specific requirements of the policy does not relieve the employees of the obligation to comply with its terms.

[63]This is so because, unlike the situation of other resigned union members discussed, supra, the January window period was available to them immediately after receiving the letters.

the "procedure as outlined in the December, 1989 issue of the Machinist newspaper." No copy of the procedure or copy of the newspaper was included. Is this reference sufficient to meet the Union's duty to fairly represent the employees or was more required to avoid misdirecting the employees by omission to timely or fully instruct them on the necessary procedures?

I reject the General Counsel's argument to the contrary and find, on this record, that District Lodge 751's reference to the newspaper issue containing the policy was sufficient under all the circumstances. First, I find insufficient evidence to support a finding of malice or bad faith on the part of District 751 in responding to the employee letters. Second, I find that it was not unreasonable for the Union to believe that employees had received a copy of the December issue of the **[328]**Machinist newspaper[64] or had ready access to one through fellow workers. Further, the Union could also have reasonably believed, that, had given employees not read or been able to locate the issue, they could have written, called or visited the union to obtain a copy of the Machinist or otherwise asked for a copy of the policy's procedure.

Given all the above, coupled with my finding that the Union bore no initial duty to disclose *Beck* procedures to employees, I find that Respondent District Lodge 751's conduct here did not violate its duty of fair representation. It follows that the employees' individual failures to file objections conforming to the requirements of the policy are not the result of any improper actions or omissions on the part of Respondent Unions. Respondent Unions' refusal to recognize the employees as objecting nonmembers and its continued actions in seeking and accepting fees equivalent to full dues was not improper and did not violate the Act. Complaint paragraph M,8 as subnumbered is without merit and shall be dismissed.

---

[64]The parties stipulated that "the vast majority" of union membership resignees would have been on the mailing list for the 1989 December issue of the Machinist magazine. In fact many employees did not receive the issue. The issue here, however, is not who in fact received the issue, but what was reasonable for District Lodge 751 to have believed in January 1990 when it sent its letters to the employees.

(5) Complaint paragraphs M,9, 10, and 11

Complaint paragraph M,9 alleges that Respondent District Lodge 751 by letters dated January 5 and 25, 1990, demanded that Boeing discharge the employees named therein. Complaint paragraph M,10 alleges that before the Union delivered the letters described in complaint paragraph M,9 it failed to notify the employees of:

> (a) their rights to object to the payment of dues for non-representational activities.
>
> (b) the exact amount of their obligations to Respondent District 751, the way such amounts were calculated and a reasonable opportunity to pay any amounts due to Respondent 751.

Complaint paragraph M,11 alleges that Respondent District Local 751 engaged in the conduct described in complaint paragraphs M,9 and 10 because certain of the employees involved: "(a) were not members of the Respondent; and (b) had failed to pay full dues when they were under no obligation to do so." The General Counsel alleges that Respondent District Lodge 751 by each of the actions set forth in complaint paragraphs M,9, 10, and 11 violated Section 8(b)(1)(A) and (2) of the Act.

The facts are not disputed and the assertions in complaint paragraphs M,9 and 10 are correct. Addressing complaint paragraph M,10(a), I have found in dealing with complaint paragraph D,7, supra, that a union has no duty to inform employees of their *Beck* rights at any time even before seeking employees' discharge for failure to comply with the terms of a valid union-security clause. Applying that analysis here, Respondent District Lodge 751 had no obligation to inform employees of their rights to object to the payment of due for nonrepresentational expenses. Therefore although complaint paragraph M,10 (a) is factually correct, it does not state a violation of Section 8(b)(1)(A) or (2) of the Act. I shall therefore dismiss complaint paragraph M,10(a).

Complaint paragraph M,10(b) in conjunction with paragraph M,9, as argued by the General Counsel, sets forth a classic violation of *Hotel & Restaurant Employees Local 568 (Philadel-*

phia Sheraton), 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir.1963); *Helmsley-Spear, Inc.*, 275 NLRB 262. Respondent Unions admit the General Counsel "technically has identified a violation." (R.U.Br. at 142.)

Counsel for Respondent Unions argues, however, that the violation arose through innocent mistake in the "chaos" of the post strike press of union office work, was inconsistent with District Lodge 751's usual practices and did not result in employees being threatened or discharged. Therefore argues the Union the violation should be regarded as technical, innocent and of no consequence. The General Counsel finds the conduct to be other than an innocent mistake arising from post strike confusion.

It is sufficient to resolve complaint paragraph M,10(b) to find that Respondent District Lodge 751 has not established a basis for setting aside the General Counsel's prima facie case nor for reducing the traditional Board remedy in such cases. I therefore find Respondent District Lodge 751's conduct alleged in complaint paragraph M,9, taken without first engaging in the conduct set forth in complaint subparagraph M,10(b), violates Section 8(b)(1)(A) and (2) of the Act. Accordingly, I sustain complaint paragraph M,10(b).

Complaint paragraph M,11 alleges that Respondent District Lodge 751 engaged in the conduct set forth in complaint paragraphs M,9 and 10 because the employees who were the subject of the discharge requests were: "(a) not members of the Respondent; and (b) had failed to pay full dues when they were under no obligation to do so."

I have found, supra, that Respondent District Lodge 751 had no duty to inform employees of their right to object to the payment of dues for nonrepresentational activities. Therefore I dismissed complaint paragraph M,10(a). The General Counsel contends that full dues may not be collected absent such notice. This appears to be the General Counsel's theory under complaint paragraph M,11(b) as to why employees had no obligation to pay dues. Having rejected that theory above, I also reject it as to paragraph M,11(b) of the complaint.

Paragraph M,11(a) suggests that the Union's efforts to obtain employees' discharges was because of their union resignations during the strike. The evidence establishes that

District 751's actions in seeking discharge of the employees at issue was precipitous and inconsistent with past practice. The argument of Respondent Unions that all was but an innocent mistake is rejected. The speed of the action and its uncustomary rigor sustains the animus theory of the General Counsel. I sustain complaint paragraph M,11(a).

10. Generai Dynamics, Convair Division and Electronic Division—complaint section P

a. *Events*

General Dynamics, Convair Division, has at all times material recognized Respondent International, Respondent District Lodge 50, and Respondent Local 1125 as the exclusive representatives for purposes of collective bargaining of a unit of employees (the Convair unit). General Dynamics, Electronic Division, has at all times material recognized these **[329]**same three entities as the exclusive representatives for purposes of collective bargaining of a unit of employees at its San Diego, California facility (the Electronic unit). The parties have at all relevant times had a separate collective-bargaining contract which contained a union-security clause for each unit.

Beldon Lyons has at all relevant times been an employee in the Convair unit and subject to the union-security provision of the applicable contract. William Koehly has at all relevant times been an employee in the Electronic unit and subject to the union-security provisions of the applicable contract. Lyons received a copy of December 1989 Machinist which contained the full text of Respondent Unions' policy.

By letter dated March 7, 1990, Lyons resigned his union membership and objected to the payment of fees for nonrepresentational activities. By letter dated April 9, 1990, and received by Lyons on April 13, 1990, Respondent International accepted his resignation from the Union, but denied him the right to be an objector and pay a reduced fee because his objection was received outside Respondent International's policy's window period. For the remainder of calendar year 1990, Respondent International, Respondent District 50, and Respondent Local 1125 declined to recognize Lyons as an

objecting member and continued to charge Lyons fees equivalent to the full amount of dues, including fees for nonrepresentational activities.

Lyons was recognized by Respondent International as an objector for calendar year 1991 and charged reduced fees in accordance with Respondent International's policy and procedures discussed, supra. As described above for other objectors, Lyons' fees were determined in part by a survey audit of District and Local Lodges conducted by Grand Lodge auditing staff which in 1991 did not include either District Lodge 50 or Local Lodge 1125.

By letter dated February 5, 1991, Koehly resigned his membership and objected under *Beck* to dues expenditures. At all times thereafter through calendar 1991 Respondent Unions refused to treat Koehly as a perfected objector.

b. *Analysis and conclusions*

The only complaint paragraph of section P alleging a violation of the Act is paragraph P,4 and its subnumbers:

> P,4. Since on or about April 9, 1990 with respect to Lyons, and since on or about February 5, 1991 with respect to Koehly, Respondents International, District 50 and Local 1125 have:
>
> (a) Refused to recognize Lyons and Koehly as objecting non-member[s].
>
> (b) Continued to seek and accept fees equivalent to full dues from Lyons and Koehly as a condition of their continued employment at Convair and Electronic Division.
>
> (c) Continued to charge Lyons and Koehly for nonrepresentational activities.

The General Counsel and Respondent Unions agree that these allegations are addressed by the argument respecting complaint paragraph D,7(c). In considering that paragraph of the complaint I determined that under Board law a union could not hold newly resigned union members to a 1-month-per-year

window period to file dues objector applications only randomly related to the date of their resignation from the union.

Applying that holding here, and since Respondent Unions' policy has no window period for union resigners following the date of union resignation, Respondent Unions could not properly reject the dues objector application of either Lyons or Koehly. Accordingly the rejections and the subsequent refusals to treat the employees as perfected dues objectors for the remainder of the calendar year in which the requests were submitted is a violation of Section 8(b)(1)(A) of the Act.

The General Counsel also alleges that Lyons, like other Charging Parties discussed, supra, as a recognized dues objector treated as other dues objectors under Respondent Union's policy, was charged for nonrepresentational expenses. To the extent noted supra, respecting extra unit litigation expenses and legislative expenses, I agree. As held supra, I do not find other unit-by-unit calculation of representational expenses is necessary under *Beck*.

Respondent Unions argue that Koehly's "allegation challenging application of the January window period" is barred by operation of Section 10(b) of the Act. The complaint alleges and Respondent Unions' answer admits that William Koehly's charge, Case 34-CB-1440-86 (formerly Case 21-CB-11001), was filed on March 14, 1991, and served the same day. The complaint allegations as to Koehly begin on February 5, 1991, less than 6 months before the date of the charge or its service on Respondent Unions. The charge's body includes the allegations included in the complaint as to Koehly. Accordingly I do not find complaint allegation P,4 time barred as to Koehly.

In summary, I find that Respondent International, Respondent District Lodge 50, and Respondent Local Lodge 1125 violated Section 8(b)(1)(A) of the Act by failing to honor Lyons' dues objector application in March 1990 and Koehly's dues objector application in February 1991. Their action in refusing to reduce dues obligations as required by *Beck* for the remainder of the calendar year in which each filed his dues objection further violates Section 8(b)(1)(A) of the Act. Finally, their action in collecting extra unit litigation expenses and legislative expenses from Lyons in calendar 1991 during his time as a perfected dues objector further violates the Act. The General

Counsel's complaint paragraph P,4 is sustained to the extent of the findings above.

11. GE Medical—complaint section Q

a. *Events*

GE Medical at all times material has recognized Respondent International, Respondent Local Lodge 1916, and Respondent Local Lodge 78 as the exclusive representatives for purposes of collective bargaining of two separate units of employees. The units have at relevant times been covered by contracts with identical agency shop language.

At all relevant times Michael Meunier, Alan P. Strang, Thomas Gratz, and Richard A. Martin have been employees in the units and have not been members of Respondent International or Respondent Local 78. In or about August 1985 Meunier, Strang, Gratz, and Martin notified Respondent Unions of their objection to expenditures of their agency fees on nonrepresentational activities. Dietrich did the same on or **[330]**about August 29, 1985. Strang, Gratz, Martin, and Dietrich filed unfair labor practices against Respondent Unions on October 24, 1985.

Respondent Unions recognized Meunier, Strang, and Dietrich as objectors by letters dated November 20, 1985, and Gratz and Martin by letters dated December 18, 1985. Each letter contained the following paragraph:

> As you and your attorney are aware, the question of whether and how much of an individual's monthly dues payment is properly rebatable is a matter that is being actively litigated at this time. Accordingly, until such time as the courts resolve these questions, we will place a portion of your dues payments (25 percent) in an interest-bearing escrow account beginning with your September, 1985, dues payment. This interim measure has been widely accepted in similar situations, and we trust will resolve your concerns at this time.

Respondent Unions have recognized Strang, Gratz, and Martin as fee objectors at all times thereafter. They recognized Meunier through calendar year 1990 after which he did not file for objector status. Respondent Unions recognized Dietrich during his employment through 1990. He did not file for objector status in January 1991.

Respondent Unions continued to collect agency fees equal to full membership dues from the employees until October 13, 1989, save from Dietrich from whom fees were not collected after his March 1986 termination. All agency fees collected from these individuals for the period September 1985 through October 13, 1989, were placed in an interest bearing escrow account.

By identical letters dated September 20, 1988, Respondent International sent copies of its policy and a packet of materials on previous audits to the individuals named above. Counsel for the Charging Parties responded by letter dated October 5, 1988, renewing the employees' objections, complaining of the sufficiency and timeliness of the information submitted, complaining of the continued exaction of full dues equivalents and raising various other matters. On October 13, 1989, Respondent Unions sent letters to each employee—save Dietrich who was sent a letter dated September 4, 1991,—refunding to all employees with interest a portion of the fees collected in the September 1985 through October 1989 period.

The amounts refunded to the employees and the advance fee reductions applied to the employees in 1989, 1990, and 1991 were undertaken by Respondent Unions in accordance with Respondent Unions' policy. The fees collected included compensation for legislative activities and litigation engaged in on behalf of units other than the GE Medical units.

b. *Analysis and conclusions*

The sole paragraph of complaint section Q alleging conduct violative of the Act is paragraph Q,4. It states:

> Q,4. Upon receipt of the [August 1985] objections described above in paragraph Q,3(c), Respondents International, Local 1916 and Local 78:

(a) Failed and refused to recognize the named employees as objecting non-members until November 20, 1985.

(b) Continued to seek and accept fees equivalent to full dues as a condition of the named employees continued employment at GE Medical until October 13, 1989.

(c) Continued to charge the named employees for non-representational activities in the manner set forth above in [complaint] paragraph D,10.

Subparagraph (a) is factually correct. The General Counsel argues *Beck*, although not decided by the Court until June 1988, applies retroactively. Respondent Unions argue that the delay from August to November 20, 1985, in acknowledging the employees as objecting nonmembers is not unreasonable given that the law respecting employees under the Act remained in litigation until the events at issue were concluded. I agree. Even if *Beck* is held retroactive to the times at issue here, the Union could fairly been expected to move more slowly in that period than after the Supreme Court had definitively spoken on the issue. Further, finding a violation given the actions taken by Respondent Unions since, and the further actions required of them in this decision, would not materially add to the remedy now directed.

Subparagraph (b) is again undisputed. Here the implementation of *Beck*, even to the extent of reducing the collection of dues in accordance with the Union's policy, was not undertaken until October 13, 1989. I find that Respondent Unions' delay here was unreasonable, was unexplained, and violated Section 8(b)(1)(A) of the Act.

Subparagraph (c) is a repetition of the earlier paragraphs tracking D,10 of the complaint. I reach the same conclusion here as in considering that paragraph. Collections from employees violated Section 8(b)(1)(A) of the Act to the extent they included compensation for legislative expenses and extra unit litigation expenses.

12. Trane—complaint section R

a. *Events*

At all times material Trane has maintained a collective-bargaining agreement with Respondent Lodge 21 and Respondent District 66 covering a unit of production and maintenance employees at Trane's LaCrosse, Wisconsin facility. The contract contains union-security language.

At all relevant times Robin Hanson has been an employee of Trane in the unit represented by Respondent District 66 through Local Lodge 21. Following various correspondence, on January 2, 1990, Hanson formally objected to Respondent Unions' expenditure of dues on nonrepresentational activities. Since on or about February 2, 1990, the Union has recognized Hanson as an objector and has treated him as other objectors in accordance with its policy and the procedures discussed here.

b. *Analysis and conclusions*

The single complaint subparagraph involved here, R,4(b), alleges that Respondent Unions have continued to charge Hanson for nonrepresentational activities in the manner set forth in (complaint) paragraph D,10. Consistent with my findings respecting complaint paragraph D,10 and the later paragraphs similar to the instant paragraph, I make the fol–**[331]**lowing findings.[65] To the extent that Hanson has been charged for legislative expenses and for extra unit litigation expenses, Respondent Unions have violated Section 8(b)(1)(A) of the Act and complaint paragraph R,4(b) is sustained.

CONCLUSIONS OF LAW

---

[65] Respondent Union argues that since Hanson's charge was filed on October 3, 1990, its reach must be limited under Sec. 10(b) of the Act to the period commencing 6 months before. Hanson was not informed of the ultimate disposition of Respondent Unions allocation formulations for 1990 until much later. Sec. 10(b) did not begin to run until the Union had made its final determination and communicated that determination to Hanson. Accordingly the objector dues paid in the first few months of 1990 are properly within the reach of the October 1990 charge and the complaint.

1. The following Employers, and each of them, are Employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act:

Dynamic Controls
Electric Boat
California Saw and Knife Works
Aerojet General
McDonnell Douglas
Lockheed Aircraft Service Company
Lockheed Missiles
The Boeing Company
GE Medical
The Trane Company

2. Respondent Unions, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent International:

(a) Has violated Section 8(b)(1)(A) of the Act by engaging in the conduct found violative, supra, as alleged in complaint paragraphs: D,7(c) concerning the provision of rights to object to resigned union members; D,8(a), (b), and D,9(a) until 1990; D,9(b) concerning unit litigation expenses charged to dues objectors; D,9(c) as to initiation fees; D,10 as to extra unit litigation expenses and legislative expenses; E,6(a), (b), (c), and (d) as to legislative and extra unit litigation expenses; E,7 and F, 5 as to extra unit litigation and legislative expenses; G,5, 6, 7, and 8, H,4(a) and 5 as to employees who had not paid their reinstatement fees; H,8(b), 10(a), (b), and (c) as to extra unit litigation and legislative expenses; H,11(a) and (b), I,6, and J,7 to the extent of extra unit legislative expenses and legislative expenses; J,9(a), (b), (c), and 12 to the extent of extra unit litigation expenses and legislative expenses; J,13, K,4(b), 5, and 7 to the extent of extra unit litigation expenses and legislative expenses; M,9, 10(b), 11(a), P,4, Q,4(b), and (c) as to extra unit litigation and legislative expenses; and R,4(b) as to extra unit litigation and legislative expenses.

(b) Has not violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs: D,7(a), (b), and (c) save as set forth above; D,8(c) and 9(a) after 1990; D,9(b) save as set forth above; D,9(c) as to unit-by-unit justification; D,9(d) and 10 save as set

forth above respecting extra unit litigation expenses and legislative expenses; D,11, E,4(a), (b), (c), (d), and 6(d) other than as specifically found above; F,5 save as set forth above; G,10, H, 5(a) as to employees who were not listed as owing a reinstatement fee; H,6(b), 7, 8(a), 12, and J,7 save to the extent found above; J,10(b) and 12 save to the extent found above; K,7 save to the extent found above; L,4(a), (b), (c), M,4, 5, 6, 8, 10(a), 11(b), Q,4(a) and (c) to the extent not found above; and R,4(b) to the extent not found above.

(c) Has violated Section 8(b)(2) of the Act by engaging in the conduct found violative, supra, as alleged in complaint paragraphs: G,6, 7, 8, and H,6(a) respecting employees who were denoted as having failed to pay their reinstatement fees; and M,9 and 10(b).

(d) Has not violated Section 8(b)(2) of the Act as alleged in complaint paragraphs: 6(b) to the extent employees did not owe a reinstatement fee and M,10(a) and 11.

4. Respondent Local 354 has violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs: E,6(a), (b), (c), and (d) as to legislative and extra unit litigation expenses and E,7. Respondent Local 354 has not violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs E,4(a), (b), (c), (d), or 6(d) other than as specifically found above.

5. Respondent Local 1871 has violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraph F,5 as to extra unit and legislative expenses and not as to other allegations contained therein.

6. (a) Respondent District Lodge 115 and Respondent Local Lodge 1327 have violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs G,5, 6, 7, and 8. They have not violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphG,10.

(b) Respondent District Lodge 115 and Respondent Local Lodge 1327 have violated Section 8(b)(2) of the Act as alleged in complaint paragraphs G,6, 7, and 8.

7. (a) Respondent Local 946 violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs: H,4(a) and 5 as to employees who had not paid their reinstatement fees; H,8(b), 10(a), (b), and (c) as to extra unit litigation and legislative expenses and H,11(a) and (b). It has not violated the Act as

alleged in complaint paragraphs H,5(a) as to employees who were not listed as owing a reinstatement fee, H,6(b), 7, 8(a) and 12.

(b) Respondent Local 946 has violated Section 8(b)(2) of the Act as alleged in paragraph H,6(a) respecting employees who were denoted as having failed to pay their reinstatement fees. It has not violated the Act as alleged in complaint paragraph 6(b) to the extent employees did not owe or a reinstatement fee.

8. Respondent District Lodge 720 and Respondent Local Lodge 2024 violated Section 8(b)(1)(A) of the Act by engaging in the conduct described in complaint paragraph I,6.

9. (a) Respondent District Lodge 120 and Respondent Local Lodge 821 violated Section 8(b)(1)(A) of the Act by engaging in the conduct set forth in complaint paragraphs J,7 and 12 to the extent of extra unit litigation expenses and legislative expenses.

Respondent Local Lodge 821 has further violated Section 8(b)(1)(A) of the Act by engaging in the conduct set forth in complaint paragraphs J,9(a), (b), (c), and 13.

(b) Respondent District Lodge 120 and Respondent Local Lodge 821 have not violated the Act as alleged in complaint paragraphs J,6 and 10(b). District Lodge 120 has not violated **[332]**the Act as alleged in complaint paragraphs J,9(a), (b), (c) and 13.

10. Respondent District Lodge 508 and Respondent Local Lodges 2227 and 2230 violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraphs K,4(b), 5, and K,7 to the extent of extra unit litigation expenses and legislative expenses.

11. Respondent District Lodge 751 has violated Section 8(b)(1)(A) and (2) of the Act as alleged in complaint paragraphs M,9 and 10(b). Respondent District Lodge 751 has not violated the Act as alleged in complaint paragraphs M,4, 5, 6, 8, 10(a), and 11.

12. Respondent District Lodge 50 and Local Lodge 1125 have violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraph P,4.

13. Respondent Local Lodge 1916 and Respondent Local Lodge 78 have violated Section 8(b)(1)(A) of the Act as alleged in complaint paragraph Q,4(b) and (c) to the extent of extra unit litigation and legislative expenses. They did not violate the Act with respect to paragraph Q,4(a) of the Act.

14. Respondent District Lodge 66 has violated Section 8(b)(1)(A) of the Act as alleged in paragraph R,(b) of the complaint to the extent of extra unit litigation and legislative expenses.

15. Respondent California Saw has not violated Section 8(a)(3) and (1) of the Act as alleged in complaint paragraphs G, 8 and 9.

16. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

17. The complaint paragraphs which were found to be without merit above are dismissed.

18. The complaint shall be dismissed in it entirety as to Respondent California Saw.

REMEDY

Having found that Respondent Unions have engaged in various unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that they be ordered to cease and desist therefrom and take certain affirmative actions necessary to effectuate the purposes of the Act. Certain aspects of the remedy here are discussed below.

1. The national issues

The General Counsel in his complaint, at trial and on brief, seeks an order requiring Respondent Unions to permit nonunion members to file dues objector applications by means other than by certified mail and individually submitted letter. He further seeks to compel Respondent Unions to accept as timely objections filed by union membership resignees within a reasonable period after the date of the submission of their resignations. The General Counsel further seeks an order directing that the policy be amended to reflect these changes in procedures. He also seeks an order directing Respondent Unions to cease charging perfected objectors for legislative and extra unit litigation expenses and to provide objectors with a unit-by-unit breakdown of all chargeable litigation expenses.

Since I have found Respondent International's policy restriction on the dues objector applications of recently resigned

union members limiting their submission of dues objections to the annual January window period violative of the Act, I shall order Respondent Unions not to enforce the policy restriction as currently written against dues objections of union member resignees. Further, since the policy as now written creates the misleading impression that union resignees are limited to filing objections only during the January window period, Respondent shall amend its policy and explanatory literature, if any, to make it clear that there is no such restriction. Respondent Unions may amend, at their sole option, the policy to limit the time of filing of union member resigner dues objector applications so long as such restrictions retain the resignees' rights to file objections for a reasonable period after their union resignation of not less than 30 days.

Inasmuch as I have found improper Respondent Unions' policy limitations on the physical form dues objections may take, I agree with the General Counsel it is appropriate to direct that Respondent International not reject dues objections sent by other than certified mail or sent in other than individual envelopes. Respondent International will therefore be ordered to delete from its Policy the requirements that objections must be sent by certified mail and that objections be sent in individual envelopes. Further Respondent Unions will be ordered to amend its policy and explanatory materials, if any, to make it clear that the policy applies to initiation fees as well as periodic dues. Absent other not illegal provisions treating the two categories independently, the policy will also indicate that initiation fees and periodic dues will treated equally.

Respondent International will be ordered to cease and desist charging objectors for legislative expenses and for extra unit litigation expenses. Respecting litigation expenses in units in which there are dues objectors, Respondent International may elect either to cease and desist from collecting for such expenses—in effect abandoning collection of all litigation expenses—or must first provide objectors with a unit accounting of such expenses sufficient for the objectors to determine if they are being charged for litigation expenses related to their own bargaining unit.

Consistent with Respondent Unions' argument on brief, the calculation of the amount of legislative expenses and extra unit

litigation expenses improperly collected from perfected dues objectors since December 1988, and due and owing to objectors, will be deferred until the compliance stage of these proceedings. If Respondent Unions elect, they may refund all litigation expenses rather than calculate the lesser amounts which might be refunded to dues objectors in units which experienced unit specific litigation expenses. These sums, with interest calculated in accordance with Board policy,[66] must be refunded to each dues objector irrespective of their final amount.[67]

[333]The General Counsel in his prayer for relief at page 39 of the complaint seeks, inter alia:

> a make-whole remedy for the charging parties here and other similarly situated employees, who have filed or attempted to file objections. . . .

Respondent Unions argue any remedy must be limited to named individuals in the complaint and/or the Charging Party who brought the charge that underlies any given claim.

I have directed in several cases, supra, that similarly situated individuals may be identified at the compliance stage of these unfair labor practice proceedings, I reaffirm those findings here. Thus, the General Counsel may obtain relief for members of the bargaining units at issue here who actually submitted objections to Respondent International since December 1988 through the

---

[66] See *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[67]The Supreme Court made it clear that a de minimus argument will not lie respecting over collections in this area. *Hudson*, supra, 475 U.S. 292. The record establishes however that Respondent International, following final determinations of dues reductions in certain years, elected not to charge dues objectors the excess of dues owed over dues collected. Respondent Unions may subtract the "forgiven amounts" in each particular year, if properly documented, from the amounts due each objector in the same year with interest accruing only on the net amount the objector is owed. Should the amounts due under the terms of this Order be less than the amounts "forgiven" by Respondent Unions for any or all objectors, no refunds shall be necessary to such objectors in the face of such a credit balance.

date of the issuance of the final complaint, but whose otherwise proper and timely objections were rejected by Respondent International as a result of the restrictions found violative of Section 8(b)(1)(A) of the Act in complaint paragraphs D,7(c), 8(a), and (b), i.e., objections rejected because the were not submitted by certified mail or in individual envelopes or because recent union resignees' objections were not submitted within the January window period. The burden of proof respecting the establishing of a prima facie violation and all defenses to the violation shall remain as they existed at the unfair labor practice stage of these proceedings.

All unit employees who would have been perfected objectors, but for Respondent Unions' conduct found violative here, shall be treated as if they had been granted objector status by Respondent International in a manner free from unfair labor practices and at a time when such processing would have occurred but for the unfair labor practices found here. Each such employee shall be made whole, with interest, for all payments made to the Unions in excess of those amounts which would have properly been collected from a perfected objector at relevant times in accordance with the cases cited, supra.

I have specifically rejected the complaint allegations respecting a duty to initially notify unit employees of their *Beck* rights. I have however found that the actions of certain of Respondent Unions in responding to unit members who had mistaken beliefs or a lack of understanding of the Unions' policy procedures rose to the level of violative misdirection of those employees. I shall therefore require Respondent Unions to take prompt and reasonable efforts to correct unit member misunderstandings or ignorance respecting the specific requirements of Respondent Union's *Beck* policy and procedures. Such efforts will be undertaken on each and every occasion the labor organization learns or has good reason to believe that represented employees have misapprehensions respecting Respondent Unions' policy and the procedures utilized to provide *Beck* rights. Such responses will be undertaken in the spirit of "fair dealing" and will be directed and timed in a manner reasonably calculated to correct the perceived misunderstandings in a manner and time which will maximize the represented employees' opportunities to take advantage of those procedures.

Further, since, as noted above, I have found the policy as currently written fails to afford the minimum requirements necessary under *Beck* and Board doctrine and because this policy has been widely and regularly held out to Respondent Unions' membership and to the employees Respondent Union represents under the Act, I shall direct Respondent Unions to take certain actions necessary to ensure that the current inadequate policy provisions do not continue to misinform represented unit members respecting their *Beck* rights.

Since Respondent Unions have used the in-house monthly magazine, Machinist, to publicize the policy, I shall direct Respondent Unions to publicize any amended policy resulting from compliance with the Order here in the same manner. I shall also require Respondent Unions to publish a copy of the "national notice"[68] set forth in Appendix VII-1 of this decision, as more fully explained below, in the first three consecutive issues of the Machinist, appearing after the issuance of this decision for which it is possible to insert new copy. The notice will be printed without reduction in size beyond what is necessary to fairly reproduce and represent the English language version of the notice in a legible and intelligible manner occupying not less than one full page of the magazine. The front cover of each such issue shall bear a header or customary banner noting the presence of the Notice and its subject matter within the issue. These issues shall receive the distribution customary for issues of the Machinist. The amended policy shall be printed in full on the pages following the notice in each issue of the Machinist and that fact shall also appear on the cover of each issue.

Copies of the national notice and accompanying amended policy, in conjunction with relevant Local notices as discussed below, shall also be posted at Respondent International's

---

[68]Since the publication directed here relates only to the "national issues" found violative of certain paragraphs of sec. D of the complaint, the "national notice" as published in the Machinist will have all references to other notices deleted.

offices.[69] The national notice and accompanying amended policy will also be posted at the offices of each Respondent Local and DIstrict Union found to have violated the Act here along with a copy of the applicable Local Notice. Further, sufficient copies of the combined national notice, amended policy, and local notices relevant to each bargaining unit or units here shall be signed and submitted to the relevant employers here for posting, be they willing, at all locations where unit employees are employed.[70]

[334]2. Local issues

a. *Respondent International as a coviolator of the Act with various Respondent District and Local Lodges*

Portions of sections E through R of the complaint have been found meritorious, supra. Without exception, each violation found includes Respondent International and one or more Respondent Districe or Local Lodges, Local issues, violations and remedies therefore include Respondent International. Respondent International stands jointly and severally liable with each relevant District and Local Lodge found to have violated the Act respecting the local allegations of the complaint.

Rather than duplicate the extensive rectiation of findings, directed remedies, and portions of the orders that are directed to the various Local and District Lodges, infra, in separate recita-

---

[69]The national notice posted at the International's offices will be posted along with each of the local notices noted, infra. The language on the national notice referring to a single local notice will be changed to indicate all local notices are being posted with the national notice at the International offices.

[70] I have dismissed all local allegations alleged in sec. L of the complaint dealing with the General Dynamics, Fort Worth, Texas Division. No 'Local notice' is therefore to be posted respecting those allegations by General Dynamics. Accordingly, only the 'national notice' and amended policy will be posted by General Dynamics, if willing, at General Dynamics, Fort Worth Division's locations where unit employees are employed. That national notice will be modified to eliminate any reference to a second notice or local violations for such postings.

tions applicable to Respondent International, I shall simply here incorporate by reference all language in the following portions of theis decision addressed to Respondent Unions other than Respondent International.

b. *Similar remedies for similar violations*

The remedies and means and manner of calculating the remedies including interest set forth above as to 'national issues' apply equally to Respondent District and Local 'Local Issues' portion of the complaint. The analysis and citations here are therefore to be included in the discussion of local matters immediately following.

c. *Local notices*

Each of Respondent Unions has been found to have engaged in one or more violations of Section 8(b)(1)(A) and/or (2) of the Act. I shall direct each Local or District Lodge here to post a notice addressing the violations found with respoect to it. See Appendices VII-2 through 12. The General Counsel sought and I have ordered posting of the 'national notice' at each of Respondent District and Local Lodges representing the employees involved here. To avoid potentially redundant and confusing repetions of notice lanugage, I have made each local notice address only local violations found and will direct each local notice be posted in conjunction with the 'national notice.' The Grand, Local, District Lodges, and Local Lodges obligated to sign and post each local notice shall also make available sufficient signed notices for posting by the employer of the relevant unit employees, if willing at all places where notices to unit employees are customarily posted.

d. *Other matters*

Those Respondent Unions found to have violated Section 8(b)(2) of the Act by threatening employees or by attempting to cause an employer to discharge employees, shall be ordered to notify the employer in writing that the demand has been withdrawn. Each employee involved shall also be notified, in writing

that the discharge demand made to the Employer has been withdrawn or that the threat to seek their discharge by the employee has been withdrawn. Where more than one of Respondent Unions are bound to take identical actions, the remedial action need not be duplicated if the single Respondent Union undertaking the directed action has the authorization of the other involved Respondents to take the directed action and makes it clear to all concerned that the required action is being taken on behalf of and at the direction of all relevant Respondents.

Those Respondent Unions found to have violated Section 8(b)(1)(A) and (2) of the Act by causing Respondent California Saw to discharge Charging Party Podchernikoffshall, jointly and severally, make him whole for any all losses of wages, benefits and other emoluments of employment suffered by reasons of his discharge up to the date the employer offered and be declined reinstatement in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as porvided in *New Horizons for the Retarded*, 283 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

e. *In the event of partial or serial compliance*

Circumstances may occur such that not all Respondents may comply simultaneously with the Order directed here. Should this occur, the notice posting provisions requiring multiple posting may not remain possible or desirable. In such an event, the General Counsel may through consolidation or other modification alter the notice language and the posting directed here to best preserve the nature of the remedy directed in light of the changed circumstances. Objections of the other parties to such alterations and amendments by the General Counsel may be raised in the compliance stage of these proceedings as appropriate.

[Recommended Order omitted from publication.]

[Appendices Omitted]

FILED
JUL 30 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 97-1832

In the Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

FREDERICK L. FEINSTEIN
Acting General Counsel

LINDA SHER
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

JOHN EMAD ARBAB
Attorney
National Labor Relations Board
Washington, D.C. 20570

34 pp

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board reasonably concluded that the union did not breach its duty of fair representation under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, by calculating the reduced agency fee charged to objecting nonmember employees on a union-wide rather than a unit-by-unit basis.

2. Whether the Board reasonably concluded that the union did not breach its duty of fair representation by charging objecting nonmember employees for litigation expenses that are related to the union's basic representational functions but were incurred outside the employees' bargaining unit.

3. Whether the Board reasonably concluded that the union did not breach its duty of fair representation by using its in-house auditing staff, rather than an independent certified public accounting firm, to verify the expenditures of its affiliated district and local lodges.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	9
Conclusion	23
Appendix A	1a
Appendix B	7a
Appendix C	10a

TABLE OF AUTHORITIES

Cases:

Air Line Pilots Ass'n v. *Miller*, 118 S. Ct. 1761 (1998)	18
Air Line Pilots Ass'n v. *O'Neill*, 499 U.S. 65 (1991)	13
Albro v. *Indianapolis Educ. Ass'n*, 585 N.E.2d 666 (Ct. App.), adopted, 594 N.E.2d 781 (Ind. 1992)	17
Allentown Mack Sales & Services, Inc. v. *NLRB*, 118 S. Ct. 818 (1998)	10
Auciello Iron Works, Inc. v. *NLRB*, 517 U.S. 781 (1996)	10
Browne v. *Wisconsin Employment Relations Comm'n*, 485 N.W.2d 376 (Wis. 1992)	17
Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)	10
Chicago Teachers Union, Local No. 1 v. *Hudson*, 475 U.S. 292 (1986)	7, 17-18, 19
Communications Workers v. *Beck*, 487 U.S. 735 (1988)	2-3
Dashiell v. *Montgomery County*, 925 F.2d 750 (4th Cir. 1991)	20

Cases—Continued: Page

Electronic Workers (Paramax Systems Corp.), 322 N.L.R.B. 1 (1996), petition for review granted *sub nom. Ferriso* v. *NLRB*, 125 F.3d 865 (D.C. Cir. 1997) 20-21
Ellis v. *Railway Clerks*, 466 U.S. 435 (1984) 3, 14, 15
Ferriso v. *NLRB*, 125 F.3d 865 (D.C. Cir. 1997) 19, 20, 21
Finerty v. *NLRB*, 113 F.3d 1288 (D.C. Cir.), cert. denied, 118 S. Ct. 558 (1997) 11, 14
Ford Motor Co. v. *Huffman*, 345 U.S. 330 (1953) ... 13
General Electric Co. v. *NLRB*, 412 F.2d 512 (2d Cir. 1969) 13
Gwirtz v. *Ohio Educ. Ass'n*, 887 F.2d 678 (6th Cir. 1989), cert. denied, 494 U.S. 1080 (1990) 20
Hohe v. *Casey*, 727 F. Supp. 163 (M.D. Pa. 1989), aff'd in part, 956 F.2d 399 (3d Cir. 1992) 19
Hudson v. *Chicago Teachers Union, Local No. 1*, 922 F.2d 1306 (7th Cir.), cert. denied, 501 U.S. 1230 (1991) 19-20
Laborer's Local Union No. 1168 (Work Services Corp.), No. 16-CB-4316 (N.L.R.B. Apr. 20, 1998) . 22, 10a
Lehnert v. *Ferris Faculty Ass'n*, 500 U.S. 507 (1991) 6, 11, 15, 16
Marquez v. *Screen Actors Guild, Inc.*, cert granted, No. 97-1056 (Mar. 23, 1998) 4
NLRB v. *Curtin Matheson Scientific, Inc.*, 494 U.S. 775 (1990) 10
NLRB v. *Financial Institution Employees, Local 1182*, 475 U.S. 192 (1986) 13
NLRB v. *General Motors Corp.*, 373 U.S. 734 (1963) 2
NLRB v. *Truck Drivers Local Union No. 449*, 353 U.S. 87 (1957) 9
Pilots Against Illegal Dues v. *Air Line Pilots Ass'n*, 938 F.2d 1123 (10th Cir. 1991) 14, 16-17

Cases—Continued: Page

Reese v. *City of Columbus*, 71 F.3d 619 (6th Cir. 1995), cert. denied, 117 S. Ct. 386 (1996) 17
Teamsters Local 443 (Connecticut Limousine Service, Inc.), 324 N.L.R.B. No. 105 (Oct. 2, 1997) .. 21-22
Tierney v. *City of Toledo*:
824 F.2d 1497 (6th Cir. 1987) 20
917 F.2d 927 (6th Cir. 1990) 20
United Mine Workers v. *Pennington*, 381 U.S. 657 (1965) 13
United States v. *Arthur Young & Co.*, 465 U.S. 805 (1984) 19

Statutes:

National Labor Relations Act, 29 U.S.C. 151 *et seq.*:
§ 7, 29 U.S.C. 157 2
§ 8(a)(3), 29 U.S.C. 158(a)(3) 2
§ 8(b)(1)(A), 29 U.S.C. 158(b)(1)(A) 2, 5

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1832

ALAN STRANG, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 133 F.3d 1012. The decision and order of the National Labor Relations Board (Pet. App. 13a-142a) and the decision of the administrative law judge (Pet. App. 143a-328a) are reported at 320 N.L.R.B. 224. The Board's supplemental decision (App., *infra*, 1a-6a) is reported at 321 N.L.R.B. 731.

JURISDICTION

The judgment of the court of appeals was entered on January 14, 1998. On March 19, 1998, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including May 14, 1998. The

petition for a writ of certiorari was filed on May 13, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 8(b)(1)(A) of the National Labor Relations Act (NLRA) makes it an unfair labor practice for a union "to restrain or coerce * * * employees in the exercise of the rights guaranteed in [S]ection 7." 29 U.S.C. 158(b)(1)(A). Section 7 of the NLRA affords employees the right to engage, or "to refrain from" engaging, in activities in support of collective bargaining. 29 U.S.C. 157. Under Section 8(a)(3) of the NLRA, however, an employer and a union may contract to require as a condition of continued employment that bargaining-unit employees maintain "membership" in the union, provided that membership is available to all and that it requires only "tender[ing] the periodic dues and the initiation fees uniformly required." 29 U.S.C. 158(a)(3); see *NLRB* v. *General Motors Corp.*, 373 U.S. 734, 742 (1963) (" 'Membership' as a condition of employment is whittled down to its financial core."). The NLRA also permits an "agency shop" arrangement under which employees are not required to maintain "membership" in the union but are required, as a condition of continued employment, to pay to the union sums equal to the initiation fees and periodic dues paid by union members. *Id.* at 743-744.

As construed in this Court's decisions, the NLRA does not "permit[] a union, over the objections of dues-paying nonmember employees, to expend funds so collected on activities unrelated to collective bargaining, contract administration, or grievance adjustment." *Communications Workers* v. *Beck*, 487 U.S.

735, 738 (1988). When it receives such objections from nonmember fee payers, the union must calculate "what proportion of [union] expenditures went to activities that could be charged to dissenters" and then make an appropriate reduction in the fees required of objecting nonmembers. *Ellis* v. *Railway Clerks*, 466 U.S. 435, 457 n.15 (1984).

2. The International Association of Machinists and Aerospace Workers (IAM or Union) represents approximately 800,000 employees in 6500 bargaining units in a variety of industries in the United States and Canada. Within the United States, IAM represents primarily employees in the private sector in accordance with the NLRA and the Railway Labor Act. Approximately 12,000 of the employees represented by IAM are nonmembers of the Union. Pet. App. 32a, 158a-159a, 221a.

IAM, also known as the Grand Lodge, is organized into six geographic territories and approximately 1400 affiliated District Lodges and Local Lodges. Some Local Lodges (IAM's smallest organizational unit) represent employees in a single industry, and other Local Lodges represent employees in various industries. The District Lodges, which are comprised of two or more Local Lodges, employ business representatives, who are responsible for assisting the constituent Local Lodges. IAM reimburses the District Lodges for 50% of the cost of the business representatives' salaries and benefits. IAM also employs a staff of individuals who advise and assist the District and Local Lodges. Pet. App. 32a-33a, 158a-159a; see also App., *infra*, 2a.

Many IAM collective bargaining agreements include union security clauses, which require employees to join and maintain "membership" in IAM

after an initial period of employment. Pet. App. 32a, 159a.[1] However, in each December issue of its monthly magazine, The Machinist, IAM notifies employees that "[i]ndividuals [may] elect to be nonmember agency fee payors," and that nonmembers "meet their monthly obligation by the payment of" an agency fee equal to "monthly union dues." *Id.* at 32a, 160a & n.8; App., *infra*, 7a. IAM's notification also informs employees that "nonmember agency fee payors may object to expenditures nongermane to the collective-bargaining process and support only chargeable activities," and that the Union deems the category of chargeable expenditures to include "litigation related to * * * representational activities." *Id.* at 8a; see also Pet. App. 32a, 41a & n.53, 51a, 160a, 206a.

Union members and nonmember agency fee payers pay dues and initiation fees to their Local Lodge, which in turn remits a portion of the dues and fees to the District Lodge with which it is affiliated. The Local Lodges also pay a per capita tax to IAM. Pet. App. 32a-33a, 159a.

Each year, the Union calculates a single nationwide agency fee reduction for all objectors based on the ratio of chargeable to non-chargeable expenditures of the Grand Lodge, the District Lodges, and

---

[1] The validity of IAM's union-security clauses was not an issue before the Board (see Pet. App. 32a n.39, 159a) and is not an issue before this Court. The question whether a union breaches its duty of fair representation by negotiating and maintaining a contractual provision requiring an employee to be "a member of the Union in good standing" is, however, presented in *Marquez* v. *Screen Actors Guild, Inc.*, cert. granted, No. 97-1056 (Mar. 23, 1998). See also *United Paperworkers Int'l Union* v. *Buzenius*, petition for cert. pending, No. 97-945.

the Local Lodges. The fee reduction is uniform and does not take into account the particular bargaining unit in which the objector is employed. Pet. App. 32a-33a, 160a-161a.

The portion of the fee reduction attributable to the expenditures of the Grand Lodge is calculated based on a report issued by an independent firm of certified public accountants. Pet. App. 33a, 161a, 220a n.29. The portion of the fee reduction attributable to the expenditures of the District and Local Lodges is calculated on the basis of an audit of those entities conducted by the Grand Lodge's in-house auditing staff. Although the in-house auditors are not certified public accountants, they are specially trained to perform the auditing task. Moreover, the Grand Lodge has taken steps to insure their objectivity by forbidding the assignment of an auditor to perform an audit for a District or Local for which he or she worked or of which he or she was a member. *Id.* at 33a, 62a-63a, 161a, 220a.

On receipt of a timely objection, IAM reduces the objector's agency fee in accordance with the above calculations. IAM also provides the objector summaries of the expenditures of the Grand Lodge, District Lodges, and Local Lodges, with an explanation of how the respective fee reductions were calculated. Pet. App. 32a-33a.

3. Petitioners are objecting nonmember employees in various IAM bargaining units in the United States. Acting on charges filed by petitioners, the General Counsel of the National Labor Relations Board (Board) issued a complaint against the Union alleging that it had breached its duty of fair representation in violation of Section 8(b)(1)(A) of the NLRA, 29 U.S.C. 158(b)(1)(A), by, among other things, charging non-

member objectors for expenses "not attributable to [the Union's] representation of the objecting nonmember's bargaining unit" and using its in-house auditing staff, rather than an "independent auditor," to verify the expenditures of the District and Local Lodges. Pet. App. 59a, 144a, 164a, 203a.

The Board, affirming in part the decision of the administrative law judge, concluded that the Union had not breached its duty of fair representation in either respect. Pet. App. 49a-55a, 58a-63a, 203a-207a, 219a-227a. First, noting that "the Supreme Court and the lower courts that have addressed this issue in the public sector and [Railway Labor Act] context have not required unit-by-unit accounting," the Board held that "the duty of fair representation does not require the IAM to calculate its *Beck* dues reductions on a unit-by-unit basis." *Id.* at 50a & n.66 (citing *Lehnert* v. *Ferris Faculty Ass'n*, 500 U.S. 507 (1991)); see also Pet. App. 203a-205a.

The Board also held that "the duty of fair representation does not require unions to segregate litigation costs on a unit-by-unit basis, as long as the categories of litigation charged to objecting employees are related to the union's basic representational functions" and are not "political" in nature. Pet. App. 54a. Based on its "experience deciding cases that turn on language in collective-bargaining agreements" and its "familiarity with the body of arbitral law construing labor agreements," the Board concluded that "union litigation of issues arising in connection with collective-bargaining agreements may confer benefits on employees beyond those units immediately affected." *Id.* at 53a-54a. The Board cautioned, however, that only litigation "on behalf of one bargaining unit which is likely to benefit other

bargaining units" is chargeable. *Id.* at 55a. And the Board stressed that unions do not have "carte blanche to charge an objecting employee for litigation having only a remote or theoretical benefit to the objector's bargaining unit." *Ibid.*[2]

The Board further held that "IAM did not breach its duty of fair representation by using in-house auditors to verify the expenditures of the District and Local Lodges." Pet. App. 61a. The Board rejected the contention that the auditors lacked the necessary skills and independence. *Id.* at 61a-62a. In particular, the Board found that "IAM takes significant steps to assure objectivity in the performance of the audits of District and Local Lodges." *Ibid.* The Board also rejected the contention that this Court's decision in *Chicago Teachers Union, Local No. 1* v. *Hudson*, 475 U.S. 292 (1986), requires IAM to hire an independent certified public accounting firm to perform the audits of the District and Local Lodges. Pet. App. 60a-61a nn. 83 & 85.

4. The United States Court of Appeals for the Seventh Circuit affirmed the Board's decision. Pet. App. 1a-12a. The court held that the Board reasonably concluded that the Union did not breach its duty of fair representation by "pool[ing] all its expenditures (including litigation expenditures, treated separately by the parties but analytically identical, as far as we can see) relating to collective bargaining, and in effect divid[ing] the pool by the number of workers

---

[2] The Board also noted that "general litigation expenses unconnected to collective-bargaining or other core representational functions * * * are expressly excluded from the amounts deemed chargeable to objectors" by IAM. Pet. App. 52a n.69. Board Member Cohen dissented on the litigation-expense issue. See *id.* at 55a n.78.

that the union represents, to compute the basic agency fee." *Id.* at 4a.

The court explained that petitioners' argument that they should be charged only for "the expenses incurred by the union in representing their units * * * overlooks the economic interdependence of bargaining units." Pet. App. 5a. Because "quantification of the benefits to the workers in one bargaining unit from a worker-favorable collective bargaining agreement in another would be impossible as a practical matter," the court determined that "aggregation is the only feasible alternative to ignoring interdependence altogether." *Ibid.* The court therefore concluded that, "[f]aced with such a choice, a classic case of having to choose the lesser of two evils on insufficient information, the Board's decision cannot be deemed unreasonable." *Ibid.*

The court stressed that, before both the Board and the court, petitioners had raised only a facial challenge to the Union's method of calculating the agency fee reduction. Pet. App. 5a-6a. The court thus preserved petitioners' ability to challenge in the future the application of the Union's calculus, if petitioners could demonstrate that "the actual interdependence of units of machinists is so slight as to make the pooling of the expenses of all the different ones unreasonable." *Ibid.*

The court of appeals also held that the Board was reasonable in concluding that the Union did not violate its duty of fair representation by using its in-house auditing staff, rather than an independent certified public accounting firm, to verify the expenditures of the District and Local Lodges. See Pet. App. 6a-8a. The court noted that petitioners' challenge was not based on any evidence that the in-house

auditors were biased or unskilled but on an objection in principle to the decision not to use outside auditors. Stating that "[t]his is another area where the difference between abstract and concrete judicial review bites," the court did not foreclose an action by petitioners if they could show that the Union's in-house auditors are "so biased or so unskilled that they make many mistakes." *Id.* at 6a. But the court of appeals refused to overturn the Board's decision based on "speculat[ion] on the likelihood and direction of error under the informal system the Board has approved." *Ibid.*

The court of appeals noted that "CPAs are costly, so much so that Congress in passing the Landrum-Griffin Act rejected a proposal to require that the reports of union financial activities that the Act requires be made to union members and regulatory bodies be audited by independent CPAs." Pet. App. 6a. Although it did "not put much weight on this history" (*ibid.*), the court concluded that "[i]t is within the Board's discretion to decide whether, all things considered, the system adopted by the machinists' union is an acceptable alternative to a system in which the local would hire an independent accounting firm to audit its books." *Id.* at 8a.

ARGUMENT

1. The task of "effectuat[ing] national labor policy" by "striking th[e] balance" among competing interests in the work place is "often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *NLRB* v. *Truck Drivers Local Union No. 449*, 353 U.S. 87, 96 (1957). Accordingly, as the court of appeals explained, "the

Board has broad latitude in interpreting nondirective statutory language." Pet. App. 3a (citing *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). See also *NLRB* v. *Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 786-787 (1990) (Board entitled to "considerable deference" in formulating rules "to fill the interstices of the [Act's] broad statutory provisions," so long as "rational and consistent with the Act"); accord *Allentown Mack Sales & Service, Inc.* v. *NLRB*, 118 S.Ct. 818, 822 (1998); *Auciello Iron Works, Inc.* v. *NLRB*, 517 U.S. 781, 787-788 (1996).

Because the NLRA provides little explicit direction on the questions posed by this case, deference to the Board's determination is particularly appropriate. In addition, as the court of appeals noted, "[t]he posture of this case * * * makes judicial review necessarily abstract, and as a result limited in depth." Pet. App. 4a. "The Board evaluated [the Union's] procedures not in terms of their actual operation, evidence of which was not placed before the Board, but in terms of their conformity to the general norm of reasonableness that is implicit in the concept of 'fair' representation." *Ibid.*

The court below correctly concluded that the Board acted within its discretion in holding that the Union did not necessarily breach its duty of fair representation under the NLRA either by calculating the reduced agency fee charged to objecting nonmembers on a union-wide rather than unit-by-unit basis or by using in-house auditing staff to verify the expenditures of the District and Local Lodges. Pet. App. 4a-8a. As the court of appeals recognized, that conclusion does not prevent petitioners from raising a fair representation claim in the future based on specific

evidence showing that the Union's behavior in practice is arbitrary or otherwise unreasonable. See *id.* at 5a, 6a; see also *Finerty* v. *NLRB*, 113 F.3d 1288, 1292 (D.C. Cir.), cert. denied, 118 S. Ct. 558 (1997). Review by this Court of petitioners' abstract claims is not warranted.

2. Petitioners contend (Pet. 21-22) that, in permitting the Union to calculate the reduced agency fee charged to objecting nonmember employees on a union-wide, rather than a unit-by-unit, basis, the Board has forced nonmembers covered by the NLRA to subsidize union activities under the Railway Labor Act, public sector labor laws, and Canadian labor laws. There is no merit to that contention.[3]

a. In *Lehnert* v. *Ferris Faculty Association*, 500 U.S. 507 (1991), the plaintiffs contended that a public sector union "may not utilize dissenters' fees for activities that, though closely related to collective bargaining generally, are not undertaken directly on behalf of the bargaining unit to which the objecting employees belong." *Id.* at 519. This Court rejected that argument. The Court stated that, although it had consistently examined whether non-ideological expenses were "germane to collective bargaining," it had "never interpreted that test to require a direct * * * tangible benefit to the dissenters' bargaining unit." *Id.* at 522. To require such a direct relationship, the Court explained, would be "to ignore the unified-membership structure" of many unions, under which "membership in the local union constitutes membership in the state and national parent organizations." *Id.* at 523. The Court continued:

---

[3] This Court recently denied a petition for certiorari raising the same issue. See *Finerty* v. *NLRB*, 118 S. Ct. 558 (1997).

> The essence of the affiliation relationship is the notion that the parent will bring to bear its often considerable economic, political and informational resources when the local is in need of them. Consequently, that part of a local's affiliation fee which contributes to the pool of resources potentially available to the local is assessed for the bargaining unit's protection, even if it is not actually expended on that unit in any particular membership year.

Ibid. Accordingly, the Court concluded that "a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit." *Id.* at 524.

b. In holding that the NLRA does not require unit-by-unit fee calculations (see Pet. App. 49a-51a), the Board has concluded—consistent with *Lehnert*—that a union may create a pool of resources that will be available, as needed, to each affiliated bargaining unit and may require each unit to help finance that pool by contributing on a fixed periodic schedule whether or not a particular unit actually draws upon those resources in any given period. That rationale applies with equal force whether the contributing units are in the same industry in the same State, in different industries in Canada and the United States, or in different States with different collective bargaining laws within the United States.[4]

---

[4] There is therefore no merit to petitioners' contention (Pet. 23) that IAM's union-wide dues allocation formula gives the NLRA an impermissible extraterritorial effect. Although IAM

Contrary to petitioners' contention (Pet. 24), the Board's decision is fully consistent with "the existence of discrete and clearly defined bargaining units" contemplated by the NLRA. Although the NLRA presupposes the existence of discrete bargaining units, nothing in the statute requires unions to formulate their bargaining strategies on a unit-by-unit basis. Thus, "a union may adopt a uniform wage policy and seek vigorously to implement it even though it may suspect that some employers cannot effectively compete if they are required to pay the wage scale demanded by the union." *United Mine Workers* v. *Pennington*, 381 U.S. 657, 665 n.2 (1965). And a union may engage in coordinated bargaining along with other unions representing other bargaining units. *General Electric Co.* v. *NLRB*, 412 F.2d 512, 516-520 (2d Cir. 1969). A union enjoys the same latitude in determining how best to "provide bargaining expertise or financial support" in representing the various units that have chosen it as their bargaining agent. *NLRB* v. *Financial Institution Employees, Local 1182*, 475 U.S. 192, 199 n.5 (1986). IAM's cost-pooling method of financing collective bargaining activities is well within the "wide range of reasonableness [that] must be allowed a statutory bargaining representative in serving the unit it represents." *Air Line Pilots Ass'n* v. *O'Neill*, 499 U.S. 65, 75 (1991) (quoting *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338 (1953)).

---

has locals in Canada, the dues paid to IAM by employees in petitioners' domestic bargaining units are assessed for the purpose of protecting those bargaining units, not for the purpose of "representing Canadian bargaining units" (*ibid.*).

c. The court of appeals therefore correctly concluded that the Union did not breach its duty of fair representation by "pool[ing] all its expenditures (including litigation expenditures [which are] analytically identical, as far as we can see) relating to collective bargaining, and in effect divid[ing] the pool by the number of workers that the union represents, to compute the basic agency fee." Pet. App 4a. That conclusion is in accord with the decisions of other courts of appeals, which have also held that a union does not breach its duty of fair representation "by calculating the reduced agency fees charged to objecting nonmember employees on a union-wide, rather than unit-by-unit, basis." *Finerty* v. *NLRB*, 113 F.3d 1288, 1291 (D. C. Cir.), cert. denied, 118 S. Ct. 558 (1997); see also *Pilots Against Illegal Dues* v. *Air Line Pilots Ass'n*, 938 F.2d 1123, 1127-1129 (10th Cir. 1991) (holding the same for a union under the Railway Labor Act).

3. Petitioners contend (Pet. 16-17) that *Ellis* v. *Railway Clerks*, 466 U.S. 435 (1984), nonetheless establishes that a union cannot charge nonmember objectors for litigation expenditures "incurred outside their bargaining unit." That contention, however, rests on a misinterpretation of *Ellis*.

In *Ellis*, the Court addressed "the legality of burdening objecting employees" with union expenditures for "litigation not involving the negotiation of agreements or settlement of grievances." 466 U.S. at 440. The Court held that, unless the "bargaining unit is directly concerned, objecting employees need not share the costs" of litigation unrelated to collective bargaining activities. *Id.* at 453. The Court observed, however, that "expenses of litigation incident to negotiating and administering the contract or to set-

tling grievances and disputes arising in the bargaining unit" would be "clearly chargeable" to an objector in that unit. *Ibid.*

The Court in *Ellis* did not have occasion to consider, and therefore did not foreclose, the possibility that litigation *related to collective bargaining* that arises outside the objector's bargaining unit may be chargeable to that objector if there is a connection between the litigation and the objector's unit. See *Lehnert*, 500 U.S. at 564 (Kennedy, J., concurring in the judgment in part and dissenting in part) ("*Ellis* * * * contains no discussion of whether a local bargaining unit might choose to fund litigation which is 'a normal incident of the duties of the exclusive representative' through a cost sharing arrangement under the auspices of the affiliate.") (citation omitted).

That is the issue that the Board addressed here. And the standard enunciated by the Board for resolving the chargeability of out-of-unit litigation expenses is consistent with the general principle that this Court prescribed in *Ellis* for determining whether expenses are chargeable to dissenters. See *Ellis*, 466 U.S. at 448 ("the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative"). The Board's test permits the union to charge an objector for the expenses of litigation arising outside the objector's bargaining unit if and only if the litigation is "related to the union's basic representational functions" and is of more than "a remote or theoretical benefit to the objector's bargaining unit." Pet. App. 54a-55a. As the Board explained, under the NLRA, representational litigation arising out of a dispute in one bargaining

unit may have a direct impact on employees in another unit. See *id.* at 53a-54a & nn.75 & 76 (noting, for example, that "[l]itigation involving the meaning of provisions in other contracts that might be applied to a unit through a most favored nations clause * * * clearly can affect that unit"). When there is no connection between the litigation at issue and the objector's unit, as was the case in *Ellis*, the expenses of that litigation cannot be charged to the objector under the standard articulated by the Board. See *id.* at 55a.

Contrary to petitioners' suggestion (Pet. 17), the Board's approach is also consistent with this Court's decision in *Lehnert*.[5] Nor is there any conflict between the standard for chargeability adopted by the Board and the other court decisions cited by petitioners.[6]

---

[5] There was no majority holding in *Lehnert* on the correct standard to determine the chargeability of litigation expenditures. A plurality of the Court concluded that "extraunit litigation [is] more akin to lobbying in both kind and effect," and that "[w]hen unrelated to an objecting employee's unit, such activities are not germane to the union's duties as exclusive bargaining representative" and are thus not chargeable to objecting employees. See 500 U.S. at 528 (opinion of Blackmun, J., joined by Rehnquist, C.J., and White and Stevens, JJ.). The Board's test is consistent with that standard. Under the Board's standard, neither litigation that has no connection to the objector's bargaining unit nor "the type of political extra-unit litigation that concerned the Court in *Lehnert*" is chargeable to the objector. Pet. App. 53a-55a.

[6] The cases cited by petitioners (Pet. 17) stand only for a proposition consistent with the Board's ruling—that litigation that is unrelated to a bargaining unit and does not benefit the unit may not be charged to unit dissenters. In *Pilots Against Illegal Dues* v. *Air Line Pilots Association*, 938 F.2d 1123 (10th

Finally, petitioners err in suggesting (Pet. 19) that the Board "implicitly upheld" as chargeable "more than $3.3 million of [IAM's] extra-unit litigation." In this case, the Board did no more than establish the basic standard by which the chargeability of litigation expenditures to objectors should be determined. Neither the Board nor the court of appeals passed on the chargeability of any specific litigation expenditure by the Union. See Pet. App. 5a-6a. Any claim that specific expenditures by the Union are improper should therefore wait for another day.

4. a. Petitioners' final contention—that this Court should review the ruling by the court of appeals that the Union's auditors are sufficiently independent—is also unpersuasive. First, petitioners mistakenly argue (Pet. 13-14) that the ruling is inconsistent with *Chicago Teachers Union, Local No. 1* v. *Hudson*, 475

Cir. 1991), for example, the court concluded that litigation in connection with the bankruptcy of Continental Airlines was not chargeable to objectors at United Airlines because "[the union] failed to show * * * that this litigation benefitted the United bargaining unit in any significant way." *Id.* at 1129. In *Albro* v. *Indianapolis Education Association*, 585 N.E.2d 666 (Ct. App.), adopted, 594 N.E.2d 781 (Ind. 1992), the court held that "extra-unit litigation expenses are *not* chargeable fair share fee expenses," but the court defined "extra-unit litigation," using the *Lehnert* standard, as "unrelated to an objecting employee's unit." See 585 N.E.2d at 673. See also *Browne* v. *Wisconsin Employment Relations Comm'n*, 485 N.W.2d 376, 388 (Wis. 1992) (litigation expenses chargeable if "directly related to the objecting employee's bargaining unit"); *Reese* v. *City of Columbus*, 71 F.3d 619, 624 (6th Cir. 1995) (pooled litigation expenses chargeable to objectors because they were not "unrelated to" the objectors' unit, which "benefitted from the pooling arrangement for litigation services"), cert. denied, 117 S.Ct. 386 (1996).

U.S. 292 (1986), because the Board did not require "independent audits by certified public accountants." *Hudson* does not require that unions secure independent audits by CPAs.

In *Hudson*, the Court held that "the constitutional requirements for the [u]nion's collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." 475 U.S. at 310; see also *Air Line Pilots Ass'n* v. *Miller*, 118 S. Ct. 1761, 1766 (1998) (explaining holding of *Hudson*). The *Hudson* Court found, among other things, that the union had "provided nonmembers with inadequate information about the basis for the proportionate share." 475 U.S. at 306-307. The Court added that "[t]he Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor." *Id.* at 307 n.18.

As the court of appeals correctly concluded, *Hudson* "does not say that the auditor must be a CPA or have no affiliation with the audited union" to qualify as independent. Pet. App. 7a; see also *id.* at 60a-61a nn.83 & 85. Petitioners nonetheless assert (Pet. 14) that an "independent auditor" must be a "certified public accountant" because "*Hudson* itself used the term 'verification by an independent auditor' interchangeably with the term 'certified public accountant.'" That assertion is, however, mistaken. The *Hudson* Court's single reference to a "certified public accountant" occurred in a passage giving an example of a situation in which a union would not be required

to escrow 100% of the nonmembers' fees pending resolution of their challenges. See 475 U.S. at 310.[7] In offering that example, the Court did not purport to establish a general rule mandating that unions hire CPAs to audit the financial information that they are required to disclose to nonmembers.[8] See *Ferriso* v. *NLRB*, 125 F.3d 865, 872 (D.C. Cir. 1997) (rejecting contention that "*Hudson* should be read to require that all audits be performed by CPAs").[9]

---

[7] The Court stated: "If, for example, the original disclosure by the Union had included a certified public accountant's verified breakdown of expenditures, including some categories that no dissenter could reasonably challenge, there would be no reason to escrow the portion of the nonmember's fees that would be represented by those categories." 475 U.S. at 310.

[8] *United States* v. *Arthur Young & Co.*, 465 U.S. 805 (1984) (cited at Pet. 14), does not support the contention that *Hudson* requires unions to hire CPAs to audit their financial disclosures to nonmembers. *Hudson* nowhere refers to *Arthur Young & Co.*, which dealt with an unrelated issue. See 465 U.S. at 807 (certiorari granted "to consider whether tax accrual workpapers prepared by a corporation's independent certified public accountant in the course of regular financial audits are protected from disclosure in response to an Internal Revenue Service summons issued under § 7602 of the Internal Revenue Code").

[9] Petitioners are also incorrect in contending (Pet. 12) that "the vast majority of lower courts have interpreted *Hudson*'s 'verification by an independent auditor' requirement" to mean an audit conducted by "an independent certified public accountant." In most of the cases upon which petitioners rely (Pet. 12), the court had no occasion to reach the issue because the union in fact employed a CPA to audit its expenditures. See *Hohe* v. *Casey*, 727 F. Supp. 163, 165-166 (M.D. Pa. 1989) (CPA did not sufficiently audit union's breakdown of chargeable and nonchargeable expenses), aff'd in relevant part, 956 F.2d 399 (3d Cir. 1992); *Hudson* v. *Chicago Teachers Union, Local No. 1*, 922 F.2d 1306, 1315 (7th Cir.) (union's financial

b. Petitioners also contend (Pet. 9, 10, 15-16) that the court of appeals' ruling on the independent auditor issue conflicts with the decision of the D.C. Circuit in *Ferriso* v. *NLRB*, 125 F.3d 865 (1997). Although petitioners are correct that the two decisions are in conflict on this point, resolution of that relatively narrow conflict by this Court is not warranted at the present time.

In *Ferriso*, the Board, relying on its decision in the present case, dismissed an allegation that a union and its local violated the NLRA "because the information they were required to provide Ferriso [the non-member objector] was not verified by an independent auditor." See *Electronic Workers (Paramax*

---

disclosure to objectors included an "audit report prepared by its independent certified public accountant"), cert. denied, 501 U.S. 1230 (1991); *Tierney* v. *City of Toledo*, 917 F.2d 927, 935 (6th Cir. 1990) (rejecting contention that CPA "was not independent" of the union); *Dashiell* v. *Montgomery County*, 925 F.2d 750, 757 (4th Cir. 1991) (union submitted "its financial records to an outside accounting firm"). In *Tierney* v. *City of Toledo*, 824 F.2d 1497, 1506 (6th Cir. 1987), the court stated that *Hudson* requires that "detailed financial information concerning all major categories of union expenses * * * be audited by a certified public accountant independent of the union and provided to all non-members before any fees may be collected from them." The reference to an audit by a certified public accountant was dictum, however. The court found a failure to comply with *Hudson* not because the union provided information that was audited by someone other than a CPA but because the union did not provide any detailed financial information at all. *Tierney*, 824 F.2d at 1506; see also *id.* at 1501, 1509-1510. Cf. *Gwirtz* v. *Ohio Educ. Ass'n*, 887 F.2d 678, 682 (6th Cir. 1989) ("*Hudson* does not mandate a union to utilize the *most* detailed and effective service available to audit the financial information disclosed to nonmember employees."), cert. denied, 494 U.S. 1080 (1990).

Systems Corp.), 322 N.L.R.B. 1, 2 (1996), petition for review granted *sub nom. Ferriso* v. *NLRB*, 125 F.3d 865 (D.C. Cir. 1997). The D.C. Circuit reversed, directing the Board on remand to "order that the Unions provide Ferriso with an independent audit of their financial data, and that the independence and qualifications of the auditors conform to prevailing norms for audits of comparable entities." 125 F.3d at 873. The *Ferriso* court stated that "it is unlikely that an arrangement like that at issue in [the present case] would be consistent with the ordinary norms for the independence of an audit." *Id.* at 872. And, although it rejected the contention that *Hudson* requires "all audits be performed by CPAs," the court suggested that the audits should generally be performed either by certified public accountants or licensed public accountants. See *ibid.*

The court of appeals in the present case disagreed with the D.C. Circuit on this point. The court concluded instead that it is "within the Board's discretion to decide whether, all things considered, the system adopted by the machinists' union is an acceptable alternative to a system in which the local would hire an independent accounting firm." Pet. App. 8a.[10]

Resolution of the narrow conflict between the two courts of appeals is not warranted at this time, however, because the Board currently is reconsidering its position in light of the conflicting decisions. See *Teamsters Local 443 (Connecticut Limousine Serv-*

---

[10] The court observed that "[t]he auditors in the present case have an indirect affiliation with the audited local but are not employed by the local, and it could be argued that an independent auditor hired by the local would actually feel a greater sense of obligation to the local as the entity paying its bills." Pet. App. 7a-8a.

ice, Inc.), 324 N.L.R.B. No. 105 (Oct. 2, 1997); *Laborers' Local Union No. 1168 (Work Services Corp.)*, No. 16-CB-4316 (unpublished order dated Apr. 20, 1998, reproduced at App., *infra*, 10a-11a).[11] The Board's reconsideration of its position may well lead to resolution of the conflict in the courts of appeals. If the Board adopts the view of the D.C. Circuit, the Seventh Circuit would likely defer to the Board's change in position. See Pet. App. 8a (resolution of the issue is "within the Board's discretion"). Even if the Board reaffirms its current position, the opportunity for further consideration would allow it to respond fully to the issues raised by the *Ferriso* court and thereby aid subsequent judicial review of the issue. Review by this Court at this time would therefore be premature.

---

[11] In *Teamsters Local 443 (Connecticut Limousine Service, Inc.)*, the Board remanded the case to the administrative law judge "to adduce additional evidence concerning the type of audit performed for the [union] and the verification procedures that were used, and to make the necessary supplemental findings of fact for the Board to resolve the legal issues raised in the D.C. Circuit's decision [in *Ferriso*]." Slip op. 4. In *Laborers' Local Union No. 1168 (Work Services Corp.)*, the Board remanded the case to the administrative law judge "for development of a full factual record on which to consider the respective views of the Seventh and District of Columbia Circuit Courts of Appeal," including the issue "whether the LM-3 report on which Comptroller Adams relied in preparing the [union's] statement of expenditures was prepared pursuant to the type of audit required by the court in *Ferriso*." See App., *infra*, 11a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

FREDERICK L. FEINSTEIN
Acting General Counsel
LINDA SHER
Associate General Counsel
NORTON J. COME
Deputy Associate General Counsel
JOHN EMAD ARBAB
Attorney
National Labor Relations Board

JULY 1998

APPENDIX A

CALIFORNIA SAW AND KNIFE WORKS
AND
PETER A. PODCHERNIKOFF
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO; AND
ITS DISTRICT LODGES NOS. 50,
66, 115, 120, 508, 720, AND 751;
AND ITS LOCAL LODGES NOS. 78,
354, 821, 946, 1125, 1327, 1871,
1916, 2024, 2227 AND 2230
(VARIOUS EMPLOYERS)
AND
VARIOUS INDIVIDUALS
CASES 34-CA-5160, 34-CB-1313, 34-CB-1314,
34-CB-1315, 34-CB-1316, 34-CB-1323,
34-CB-1324, 34-CB-1360, 34-CB-1361,
34-CB-1362, 34-CB-1363, 34-CB-1408,
34-CB-1409, 34-CB-1421, 34-CB-1422,
34-CB-1440 (4-30), 34-CB-1440 (32-48),
34-CB-1440 (50-61), 34-CB-1440 (63-64),
34-CB-1440 (67-68), 34-CB-1440 (86),
34-CB-1450, 34-CB-1451, 34-CB-1452,
34-CB-1453, 34-CB-1454, 34-CB-1455, 34-CB-1510

Dated, Washington, D.C. July 12, 1996

SUPPLEMENTAL DECISION

BY CHAIRMAN GOULD AND MEMBERS
BROWNING AND COHEN

On December 20, 1995, the National Labor Relations Board issued a Decision and Order in this proceeding[1] in which it found, inter alia, that the International Association of Machinists and Aerospace Workers (IAM) violated Section 8(b)(1)(A) of the Act by failing to give all nonmember employees who enter a bargaining unit covered by a union-security clause timely notice of the rights guaranteed them by the statute pursuant to the United States Supreme Court's decision in *Communication Workers v. Beck*, 487 U.S. 735 (1988). Thereafter, on February 8, 1996, the IAM filed a motion to amend the Board's findings. Various Charging Parties and the General Counsel filed memoranda in opposition to the IAM's motion, and the IAM filed responses to the opposing memoranda. For the following reasons, we grant in part and deny in part the IAM's motion.

1. The IAM points out that the reference in the Board decision (slip op. at 7) to six District Lodges is in error insofar as it suggests that there are only six such lodges. The record shows that the IAM's lodges are dispersed among six geographic territories and does not establish the precise number of District Lodges. Thus we shall amend the sentence in question to read as follows: "The IAM, also known as the Grand Lodge, administers its *Beck* policy for its smaller District Lodges and its approximately 1400 Local Lodges (grouped, for administrative purposes, among six geographic territories)." We agree with the General Counsel that this error had no impact on any other findings in the decision.

---

[1] 320 NLRB No. 11.

2. The IAM contests the statement in the decision that "it is undisputed that the IAM failed to notify employees newly hired into the bargaining unit of their *Beck* rights at the time it first sought to obligate these employees to pay dues" (slip op. at 12), contending that it denied the complaint allegation and that the parties had thereafter stipulated that the IAM had delegated to its district and local lodges the responsibility for giving new-hire notice. The IAM seeks dismissal of the allegation and, accordingly, elimination of any finding against it on this issue and of related references in the conclusions of law and the notice. In its reply to the oppositions filed by the General Counsel and the Charging Parties, the IAM makes clear that its chief concern is that it would be unable to comply with the Board's Order regarding notices to new hires, as it understands the Order, because it is not in a position to learn of new hires in sufficient time to give them *Beck* notices.

We see no reason to vacate our finding of a violation. It is reasonable to hold the IAM, as architect of its *Beck* policy, liable for what the record indicates is the absence of any guidelines to its locals concerning the notification of newly hired employees. In fact, the record reveals that the IAM has not established any mechanisms for even intermittent monitoring of the locals' performance of the delegated function. Also, contrary to the IAM's submission, the record does show failures of locals to give notifications to new hires. To satisfy the IAM's legitimate concern, however, concerning the feasibility of its giving notice by itself to each new hire, we clarify our Order to signify that the IAM may be deemed in compliance if it has instituted procedures ensuring

that notice of *Beck* rights is given to new hires by the lodges to which the obligation has been delegated. Under this Order, if either the IAM or one of its affiliates notifies nonmember employees entering a bargaining unit of their *Beck* rights and such notice is given before or when the employees become obligated to pay dues under an applicable union-security clause, the IAM will have satisified its obligation.[2]

3. The IAM also asks the Board to correct what it terms an "inconsistency" in the decision between a finding regarding the sufficiency of the IAM's annual notice of *Beck* rights and the finding that the Unions had violated Section 8(b)(1)(A) by failing to provide notice to employees. The IAM contends the alleged inconsistency should be resolved by vacating the finding of a notice violation and its accompanying remedy. We disagree that there is any such inconsistency.

The violation found by the Board is premised on the IAM's admission that the only *Beck* notice it provides to employees is the publication of its *Beck* policy annually in the December Machinist. Thus, under the IAM's procedures, an employee hired into the unit in January, for example, would not necessarily get notice of the *Beck* policy until the following December, long after the employee would have become obligated to pay dues to the Union under the union-security clause. The delay in providing the *Beck* notice, even if the notice ultimately given was adequate, constitutes a violation of the Union's duty of

---

[2] On the other hand, if neither the Respondent IAM nor its affiliate complied with the notice obligation, then the IAM is liable for such failure to give notice in those cases where it is the 9(a) representative.

fair representation in violation of Section 8(b)(1)(A). The Board's finding of that violation does not conflict with its finding that the notice in the Machinist satisfied the duty of fair representation (slip op. at 11-12), because the latter finding concerned only the sufficiency of that notice as to format and did not concern timeliness. We therefore decline to amend our findings.[3]

4. Finally, the IAM contends that the Board's conclusion of law concerning Machinists District 751 and the Boeing Corporation is inconsistent with its action in severing and remanding the case to the judge. We disagree. The issue in that case is whether hundreds of employees who had been on strike (and whose membership in the Union lapsed after they failed to pay dues for 2 months) were sent notice of the IAM's *Beck* policy either in the December 1989 issue of the Machinist, which would have been mailed during the strike, or in the previous year's issue. In our Amended Conclusion of Law 10, we found that District Lodge 751 violated Section 8(b)(1)(A) "with respect to resigned members *who did not receive the December 1988 or 1989 issues of the Machinist.*" [Emphasis added.] We remanded to the judge for a finding whether the resigned employees were sent either of those issues of the Machinist. As we stated, (slip op. at 29) "[W]e instruct the judge to determine, based on credible evidence, whether the Unions' procedures for disseminating the IAM publication [to employees] at this facility constituted reasonable

---

[3] Member Cohen found that the notice in the Machinist was not reasonably calculated to apprise nonmember employees of their *Beck* rights. 320 NLRB No. 11, slip op. at 9, fn. 41.

steps to send the publication to all unit employees." We find no inconsistency as to this issue.[4]

Accordingly, the IAM's motion to amend the findings is granted in part and denied in part, and our decision is amended as stated in paragraph 1 above.

William B. Gould IV
Chairman

Margaret A. Browning
Member

Charles I. Cohen
Member

---

[4] As Member Cohen found that the notice in the Machinist was not sufficient to give employees initial *Beck* notice, he would find a violation with respect to the Boeing unit without the necessity of this remand. 320 NLRB No. 11, slip op. at 29, fn. 117.

APPENDIX B

[EXCERPT FROM ADMINISTRATIVE LAW JUDGE'S DECISION]

APPENDIX V

NOTICE

POLICY REGARDING FEE REDUCTIONS FOR NON-MEMBERS OBJECTING TO EXPENDITURES NONGERMANE TO THE COLLECTIVE BARGAINING PROCESS

Employees working under collective-bargaining agreements containing union-security clauses are required, as a condition of employment, to pay monthly dues or fees to the Union. Individuals who are members of our organization pay monthly union dues. Nonmembers or "agency fee payer," meet their monthly obligation by the payment of an equivalent "agency fee." Nonmembers may file objections in accordance with the procedures set forth below to certain expenditures considered to be "nongermane to the collective-bargaining process."

When considering these matters, individuals should be aware that the union-security clause contained in their collective-bargaining agreement was negotiated and ratified by their fellow employees so that everyone who benefits from the collective-bargaining process shares in its cost. The working conditions of all bargaining unit employees are improved immeasurably when the Union gains higher wages, better health care and pensions, fairness in the disciplinary system, overtime pay, vacations, and many other improvements in working conditions at the bargaining

table. And while individuals may choose to meet their financial obligations as nonmember agency fee payors, before electing agency fee payor status individuals should be aware of the additional benefits of union membership they are giving up.

Among the many opportunities available to IAM members are the right to attend and participate in union meetings; the right to nominate and vote for candidates for union office and the right to run for union office; the right to participate in contract ratification and strike votes; the right to participate in the formulation of IAM collective-bargaining demands; the right to participate as a delegate to the International union convention; the right to participate in the development and formulation of IAM policies; and the right to enjoy the many benefits of the Union Privilege Benefits Program, including low-interest union credit cards, prescription drug cards, life insurance, legal, and travel services.

Individuals who nevertheless elect to be nonmember agency fee payors may object to expenditures nongermane to the collective-bargaining process and support only chargeable activities. Expenditures germane to the collective-bargaining process for which objectors may be charged are those made for the negotiation, enforcement and administration of collective-bargaining agreements; meetings with employer and union representatives; proceedings on behalf of workers under the grievance procedure, including arbitration; legislative matters affecting the working conditions of employees in the industries represented by the IAM or related to the Union's institutional status; internal union administration; litigation related to the above activities and other representa-

tional activities. Expenditures nongermane to the collective-bargaining process and, thus, nonchargeable to objectors, are those which are not strictly related to collective bargaining. Examples of such expenditures are those made for political purposes; for general community service and legislative activities which benefit IAM-related employees as citizens rather than workers; for certain affiliation costs, and for general organizational activities.

* * * * *

APPENDIX C

NOT INCLUDED IN BOUND VOLUMES

Wichita Falls, TX

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 16-CB-4316

LABORERS' LOCAL UNION NO. 1168, AFFILIATED WITH LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO (WORK SERVICES CORPORATION)
AND
BILLY LEE
LAURA PARIS

ORDER REMANDING PROCEEDING

On June 14, 1996, the National Labor Relations Board approved a Motion to Transfer and Continue Matter Before the National Labor Relations Board and Stipulation of Facts filed by Laborers' Local Union No. 1168, Charging Parties Billy Lee and Laura Paris, and the General Counsel of the National Labor Relations Board. Thereafter, briefs were filed by the General Counsel, the Respondent, and the Charging Parties.

On September 23, 1997, the United States Court of Appeals for the District of Columbia Circuit issued

its opinion in *Ferriso v. NLRB*, 125 F.3d 865, finding, contrary to the Board's decision in *California Saw & Knife*, 320 NLRB 224, 240-41 (1995), that an independent audit of agency fee calculations is required under the Act. On January 14, 1998, the United States Court of Appeals for the Seventh Circuit issued its opinion in *International Association of Machinists v. NLRB*, 133 F.3d 1012, approving the Board's determination in *California Saw & Knife* that an independent audit is not required under the Act. The Board deems it appropriate to remand this proceeding for a hearing before an administrative law judge for development of a full factual record on which to consider the respective views of the Seventh and District of Columbia Circuit Courts of Appeal. Among the issues that the parties should address on remand is whether the LM-3 report on which Comptroller Adams relied in preparing the Respondent's statement of expenditures was prepared pursuant to the type of audit required by the court in *Ferriso*.

The Board having duly considered the matter,

IT IS ORDERED that the Board's prior approval of the Stipulation of Facts is rescinded.

IT IS FURTHER ORDERED that the proceeding is remanded to the Regional Director of Region 16 for further appropriate action consistent with this Order.

Dated, Washington, D.C., April 20, 1998.

By direction of the Board:

John J. Toner

_____

Executive Secretary

No. 97-1832

FILED
AUG 19 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG, *et al.*,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

GLENN M. TAUBMAN
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

COUNSEL OF RECORD FOR PETITIONERS

August 19, 1998

15 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

1. THE AUDIT ISSUE 1

2. THE CHARGEABILITY OF EXTRA-UNIT LITIGATION 6

3. THE CHARGEABILITY OF OTHER EXTRA-UNIT ACTIVITIES 9

CONCLUSION 10

TABLE OF AUTHORITIES

CASES *Page*

Abood v. Detroit Bd. of Educ.,
431 U.S. 209 (1977) 4

Bloom v. NLRB, ___ F.3d ___, 1998 WL 455632
(8th Cir. Aug. 7, 1998) 5

California Saw & Knife Works,
320 N.L.R.B. 224 (1995) 6

Chicago Teachers Union v. Hudson,
475 U.S. 292 (1986) ..... *passim*

Communications Workers v. Beck,
487 U.S. 735 (1988) *4*

Connecticut v. Doehr, 501 U.S. 1 (1991) 4

Damiano v. Matish, 830 F.2d 1363 (6th Cir. 1987) 5

Ellis v. Railway Clerks, 685 F.2d 1065,
(9th Cir. 1982), *rev'd*,
466 U.S. 435 (1984) 7

Ellis v. Railway Clerks, 466 U.S. 435 (1984) 6, 7, 9

Ferriso v. NLRB, 125 F.3d 865 (D.C. Cir. 1997) ... 1, 3, 5, 6

Gwirtz v. Ohio Educ. Ass'n, 887 F.2d 678
(6th Cir. 1989), *cert. denied*, 494 U.S. 1080 (1990) 2, 6

Hohe v. Casey, 727 F. Supp. 163 (M.D. Pa. 1989),
aff'd in pertinent part, 956 F.2d 399 (3d Cir. 1992) 2, 6

TABLE OF AUTHORITIES - CONTINUED

Page

IAM v. NLRB, 133 F.3d 1012 (7th Cir. 1998) 1

IAM v. Street, 367 U.S. 740 (1960) 4

Laborers' Local Union No. 1168 (Work Services Corp.), Case No. 16-CB-4316 (April 20, 1998) 5

Lehnert v. Ferris Faculty Ass'n, 500 U.S. 507 (1991) 6, 7, 10

Miller v. Air Line Pilots Ass'n, 108 F.3d 1415 (D.C. Cir. 1997) *aff'd*, ___ U.S. ___, 118 S. Ct. 1761 (1998) 4, 5

Mitchell v. Los Angeles Unified Sch. Dist., 739 F. Supp. 511 (C.D. Cal. 1990), *rev'd*, 963 F.2d 258 (9th Cir.), *cert. denied*, 506 U.S. 940 (1992) 2, 6

Nielsen v. IAM, 94 F.3d 1107 (7th Cir. 1996) 4

Pilots Against Illegal Dues v. Air Line Pilots Ass'n, 938 F.2d 1123 (10th Cir. 1991) 7

Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944) 4

Strang v. Collyer, 710 F. Supp. 9 (D.D.C. 1989), *aff'd*, 899 F.2d 1268 (D.C. Cir. 1990) 6

Teamsters v. Terry, 494 U.S. 558 (1990) 4

TABLE OF AUTHORITIES - CONTINUED

Page

Teamsters Local 166 (Dyncorp Support Services Operations), NLRB Case Nos. 31-CB-8333, 31-CB-8683 and 31-CB-8938 5

Television Artists-AFTRA (KGW Radio), NLRB Case No. 36-CB-1491 5

Tierney v. City of Toledo, 824 F.2d 1497 (6th Cir. 1987) 2, 6

Tierney v. City of Toledo, 917 F.2d 927 (6th Cir. 1990) 2, 3, 6

Wegscheid v. Auto Workers Local 2911, 117 F.3d 986 (7th Cir. 1997) 5

CONSTITUTIONAL and STATUTORY PROVISIONS

U.S. Const. amend. I 4, 5

National Labor Relations Act,
29 U.S.C. § 152(2) 9
29 U.S.C. § 152(3) 9
29 U.S.C. § 152(6) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1832

ALAN STRANG, *et al.*,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

---

1. THE AUDIT ISSUE. The National Labor Relations Board ("Board") admits that a conflict exists between the decisions of the court below and the District of Columbia Circuit concerning the requirement that unions must have their financial records audited by an independent certified public accountant before they may demand compulsory fees from nonmembers. Opposition to the Petition ("Opp.") 20; *compare IAM v. NLRB*, 133 F.3d 1012, 1016-18 (7th Cir. 1998) (reprinted at Petitioners' Appendix ("Pet. App.") 1a), *with Ferriso v. NLRB*, 125 F.3d 865, 867-72 (D.C. Cir. 1997); *see also Chicago Teachers Union v. Hudson*, 475 U.S. 292, 307 n.18, 310 (1986). Nevertheless, relying upon several faulty grounds, the Board argues that the Petition should be denied and the audit issue not resolved "at the present time." (Opp. 20).

a). First, the Board defends its refusal to require independent audits by claiming that *Hudson* never "require[d] that unions

secure independent audits." (Opp. 18). But this claim strains *Hudson* and its progeny to the breaking point.

In *Hudson*, 475 U.S. at 307 n.18 (emphasis added), this Court held that "adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor*." The Court recognized that nonmembers need verified and audited financial disclosure, prior to any agency fee collections, to adequately protect their statutory and constitutional rights to refrain from supporting causes and candidates they abhor. *Id; see also* 475 U.S. at 304 nn.12 & 13 and accompanying text. The Court could scarcely have been clearer, as the lower courts have recognized with virtual unanimity.[1]

---

[1] The Board claims that the many lower court decisions which relied upon *Hudson* to mandate independent CPA audits were merely spewing dicta, (Opp. 19 n.9), but this claim is absurd. For example, *Hohe v. Casey*, 727 F. Supp. 163, 165-66 (M.D. Pa. 1989), held that a union violated the law when its CPA audited only the basic financial statements, not the union's breakdown of chargeable versus nonchargeable expenses. Surely the court would not have issued such a ruling concerning the adequacy of a particular type of CPA's audit if *no audit was required at all!* Similarly, *Gwirtz v. Ohio Education Association*, 887 F.2d 678 (6th Cir. 1989), was a challenge to the level of CPA audit service provided by the union. The court reviewed the prior Sixth Circuit law and stated:

> This court in *Tierney* [*v. City of Toledo*, 824 F.2d 1497, 1506 (1987)] found the procedure for the collection of fair share fees from the nonmembers to be constitutionally infirm under *Hudson* because nonmembers were not, prior to the collection of fees from them, provided with detailed financial information concerning all major categories of union expenses *that had been audited by an independent certified public accountant.*

Gwirtz, 887 F.2d at 681 (emphasis added). Later, the Sixth Circuit in *Tierney v. City of Toledo*, 917 F.2d 927, 936 (1990), ordered an evidentiary hearing into "whether the auditor utilized adequate procedures to verify the expenditures." Again, why would the court have ordered such a hearing if *no* auditor was required? *See also Mitchell v. Los Angeles Unified Sch. Dist.*, 739 F. Supp. 511, 514-15 (C.D. Cal 1990), *rev'd on other grounds*, 963 F.2d 258 (9th Cir.), *cert. denied*, 506 U.S. 940 (1992) (challenge to the type of CPA audit).

Backtracking from its claim that *no* audit of any kind is required, the Board next argues that even if some audit is required, *Hudson* "did not purport to establish a general rule mandating that unions *hire CPAs to audit the financial information that they are required to disclose to nonmembers.*" (Opp. 19, emphasis added). But no other reading of *Hudson* makes sense, for the entire purpose and utility of an audit requirement would be undermined if the auditor is someone other than an independent CPA, *e.g.*, a paid union official whose sole allegiance to the union is unquestioned.[2] *Hudson*, 475 U.S. at 310 (the union would be entitled to immediate access to the objector's funds, without an escrow arrangement, if the original disclosure "had included a certified public accountant's verified breakdown of expenses"); *Ferriso*, 125 F.3d at 870-72; *Tierney*, 917 F.2d at 936 ("Disclosure of the major categories of expenses and the methodology of the agency fee calculations means very little if the non-members cannot have some level of confidence in the verification of the expenditures").[3]

In *Hudson*, this Court rejected the requirement of a full-blown evidentiary hearing prior to the seizure of agency fees from nonmembers. 475 U.S. at 308 n.21. However, as an alternative method of protecting nonmembers' rights, the Court required unions to procure independent CPA audits of their financial statements, in order to provide an independent and trustworthy check on the unions' otherwise unfettered ability to

---

[2] The IAM's "Grand Lodge Auditors" are union members in good standing selected by the IAM's Secretary-Treasurer, and their salaries are derived from the dues and agency fees of members and nonmembers. (App. B 58a-63a; App. C 217a-25a; TR 155-74). Despite their titles, these "Grand Lodge Auditors" are neither licensed accountants nor certified public accountants. They receive little formal training in accounting. (App. B 58a-63a; App. C 217a-25a; TR 406, 411-12, 466).

[3] The Board studiously ignores the fact that the union's internal "audits" were only done for a "sample" of ten of the IAM's thousands of local and district unions, so that nonmembers got *no* disclosure about the expenditures of their own local unions. (TR 261-65; Pet. App. B 58a-63a; Joint Ex. 8). Thus, the Board's decision not only does away with the audit requirement in general, but also with the requirement that nonmembers receive disclosure concerning their own local union. *But see Hudson*, 475 U.S. at 306-07.

seize any amount of agency fees they unilaterally choose. *Id.* at 304 nn.12 & 13 & accompanying text, & 307 n.18. Without such an independent, pre-collection check, nonmembers are essentially thrown to the wolves, as unions will have the power to calculate unilaterally—and then seize—any amount of dues and fees that they choose. While the nonmembers may have a post-collection lawsuit as a possible recourse, this Court is well aware that a statute which permits a private party (the IAM) to seize another's property without any independent pre-collection check carries with it the gravest due process and First Amendment implications. *See generally Connecticut v. Doehr*, 501 U.S. 1 (1991); *see also Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 198-203 (1944); *IAM v. Street*, 367 U.S. 740, 795-96 (1960) (Black, J., dissenting).

The Board also claims that "the procedures required to protect the constitutional rights of objectors in the public sector, including those defined and elaborated on in *Hudson* ... were not formulated to comport with a union's obligation under *Beck* to represent its employees fairly." (Pet. App. 59a-60a). However, this Court's jurisprudence protecting nonmembers from excessive union fee seizures has not significantly varied based upon whether the employee works in the public or private sector. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 232 (1977) ("the differences between public and private sector collective bargaining *simply do not translate into differences in First Amendment rights*") (emphasis added); *Communications Workers v. Beck*, 487 U.S. 735, 745-46 (1988) (agency fee decisions under the Railway Labor Act "controlling" under the NLRA); *see also Miller v. Air Line Pilots Ass'n*, 108 F.3d 1415, 1420 (D.C. Cir. 1997), *aff'd*, ___ U.S. ___, 118 S. Ct. 1761 (1998); *Nielsen v. IAM*, 94 F.3d 1107, 1113 (7th Cir. 1996) (the procedural protections mandated by *Hudson* "have come to be recognized as appropriate for *Beck* cases as well"). Even assuming, *arguendo*, that this case has no constitutional underpinnings, the IAM owes the nonmembers a substantial fiduciary obligation, *Teamsters v. Terry*, 494 U.S. 558 (1990), which may not be discarded simply because the Board wishes to baldly categorize

this case as "non-constitutional."[4] Pet. App. 17a-26a; *but see Hudson*, 475 U.S. at 306 ("*basic considerations of fairness*, as well as concern for the First Amendment rights at stake" mandate adequate financial disclosure) (emphasis added).[5]

In short, this Court has required union financial statements to be *"verifi[ed] by an independent auditor,"* *id.* at 307 n.18, and this requirement would be defeated unless the auditor is truly independent and capable of verifying the books and records in a way that will engender trust among nonmembers. This is a role especially suited for a CPA, not a paid employee of the very union under scrutiny. *Ferriso*, 125 F.3d at 870-72.

b). The Board also argues that the writ should be denied because the circuit split over the audit issue presents only a "relatively narrow conflict." (Opp. 20). But this "relatively narrow conflict" has practically paralyzed the Board's decision making, as witnessed by the belated and standardless remands issued by the Board in similar cases. *E.g.*, *Laborers' Local Union No. 1168 (Work Services Corp.)*, Case No. 16-CB-4316 (April 20, 1998) (reprinted at Opp. 10a). Similar issues are presented in several other pending NLRB cases, thus necessitating a ruling by this Court to provide guidance to the Board, the parties and the lower courts. *See, e.g. Teamsters Local 166 (Dyncorp Support Services Operations)*, Case Nos. 31-CB-8333, 31-CB-8683 & 31-CB-8938; *Television Artists-AFTRA (KGW Radio)*, Case No. 36-CB-1491.

---

[4] Several lower courts have recently commented upon the power of the state in the creation and enforcement of compulsory dues requirements, and the possibility of "state action" in these arrangements. *Miller v. Air Line Pilots Ass'n*, 108 F.3d at 1419-20; *Wegscheid v. Auto Workers Local 2911*, 117 F.3d 986, 987-88 (7th Cir. 1997); *Bloom v. NLRB*, ___ F.3d ___, 1998 WL 455632, n.2 (8th Cir. Aug. 7, 1998).

[5] The IAM, like most large international unions, represents employees in both the public and private sectors, (CPT Exs. 5, p. 4; 9, p. 3), so it is already required to comply directly with *Hudson's* "constitutional" requirements in some of its bargaining units. *See, e.g., Damiano v. Matish*, 830 F.2d 1363 (6th Cir. 1987) (United Auto Workers must establish procedures to comply with *Hudson* for its public sector bargaining units).

Indeed, the instant case has been pending before either the NLRB General Counsel or the Board itself for well over a decade. (Pet. App. 314-15; *Strang v. Collyer*, 710 F. Supp. 9 (D.D.C. 1989), *aff'd*, 899 F.2d 1268 (D.C. Cir. 1990)). The resulting Board decision, *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995), was designed to be the Board's lead case on these issues. Yet, over three years after its issuance, the Board still has no firm direction about how to proceed in this and related cases.

Finally, the issue itself is not nearly as narrow as the Board would have the Court believe. While the agency fee cases have not engendered a huge volume of litigation, those cases which have been litigated often turn on the adequacy of the financial disclosure or the propriety of the audits conducted. *Ferriso v. NLRB; Hohe v. Casey*, 727 F. Supp. at 165-66; *Gwirtz v. Ohio Educ. Ass'n*, 887 F.2d at 680-83; *Tierney v. City of Toledo*, 824 F.2d at 1506, *further proceedings*, 917 F.2d at 936; *Mitchell v. Los Angeles Unified Sch. Dist.*, 739 F. Supp. at 514-15. This issue will certainly recur. The Court should grant the writ to make it clear that audits by CPAs are required in order to provide nonmembers with some degree of pre-collection assurance that their property will not be seized by the union in an arbitrary and unfettered manner.

2. THE CHARGEABILITY OF EXTRA-UNIT LITIGATION. In its decision, the Board acknowledged that it was refusing to follow *Ellis v. BRAC*, 466 U.S. 435, 453 (1984) and *Lehnert v. Ferris Faculty Association*, 500 U.S. 507, 528 (1991), which held that litigation expenses without a direct connection to the nonmembers' bargaining unit are not chargeable to them. (Pet. App. 52a). "We find precedent grounded in constitutional considerations not to be binding..." *Id.* Member Cohen dissented from this holding. (Pet. App. 55a, n.78).

In its Brief, however, the Board shifts gears and claims that its ruling is "consistent with the general principle that this Court described in *Ellis*" and *Lehnert*, (Opp. 15), and that Petitioners "misinterpret[]" these cases. (Opp. 14). The Board cannot have it both ways.

Ellis unanimously held that nonmembers need only pay for union litigation "that concerns bargaining unit employees," finding that "[t]he expenses of litigation not having such a connection with the bargaining unit are not to be charged to objecting employees." 466 U.S. at 453. The *Lehnert* plurality opinion held that, while "precedent established through litigation on behalf of one unit may ultimately be of some use to another unit," when "unrelated to an objecting employee's unit, such activities are not germane to the union's duties as exclusive bargaining representative." 500 U.S. at 528. These decisions wisely attempted to draw a bright line, in order to stave off annual challenges to each and every union litigation expenditure. As the Court of Appeals for the Tenth Circuit noted, "the *Ellis* case makes no exception for litigation that helps the union in a general way or that benefits other bargaining units represented by the union. In order for litigation expenses to be charged to a bargaining unit, the litigation must concern the members of the bargaining unit." *Pilots Against Illegal Dues v. Air Line Pilots Ass'n*, 938 F.2d 1123, 1130 (1991).

Contrary to the Board's suggestion that this Court has never before faced this issue, (Opp. 15), the Court in *Ellis* directly reviewed litigation related to collective bargaining in other units. For example, the "litigation seeking to protect the rights of airline employees generally during bankruptcy proceedings" held nonchargeable in *Ellis*, 466 U.S. at 453, was "intervention in an employer's bankruptcy proceedings [that] protected the union members' wages and ensured continued compliance with the collective bargaining agreement while the employer underwent reorganization." *Ellis v. Railway Clerks*, 685 F.2d 1065, 1074 (9th Cir. 1982), *rev'd in pertinent part*, 466 U.S. 435 (1984). Similarly, "defending suits alleging violation of the nondiscrimination requirements of Title VII of the Civil Rights Act of 1964" undoubtedly is "a normal incident of the duties of the exclusive representative," but was held nonchargeable by *Ellis*, 466 U.S. at 453, unless the nonmembers' "bargaining unit is directly concerned."

Thus, far from taking a position "consistent with the general principles" of *Ellis* and *Lehnert*, (Opp. 15), the Board's decision directly conflicts with those decisions. *Ellis* stands foursquare for the proposition that nonmembers do not have to fund

litigation that does not directly relate to their unit, even if the union and the Board can stretch to claim that "litigation involving the meaning of provisions in other contracts" might later be useful precedent for the nonmembers' unit. (Pet. App. 53-54, n. 75). Subjective and *ad hoc* exceptions swallow the rule, for surely all precedents created through litigation will be of some benefit to some other litigants somewhere.

This is particularly true given the record in this case, which shows that the IAM charged nonmembers for more than $3.3 million of its extra-unit litigation, and conceded that only $159,900 was nonchargeable. (RUX 1, tab 13 ¶¶ 126-29 & Schedule 12). The Board's vague standard for "chargeable" litigation allowed the IAM to charge nonmembers for: Department of Transportation route transfer proceedings concerning Aeromexico; bankruptcy litigation concerning NLRA and RLA units; National Mediation Board election procedures; a suit against the Secretary of the Navy over his decision to award a contract to a private employer; defense of a sex discrimination suit; and more than $580,000 spent in litigation over the Eastern Air Lines strike (and secondary boycott litigation, injunctions and bankruptcy cases related to that strike). *Id.*

The Board is wrong to claim that such charges were not an issue in this case. (Opp. 17). It is true that the Board did not directly pass upon these specific litigation expenditures or divide them into chargeable and nonchargeable categories. However, they were in the record and the Board expressed no disagreement with the union's allocation of these expenditures in light of the standard that it utilized.[6]

---

[6] The General Counsel's Complaint alleged that "Respondent Unions have charged non-members ... for ... expenses not attributable to Respondent Unions' representation of the objecting non-member's bargaining unit," (Final Amended Consolidated Complaint, p. 12). The IAM conceded that it charged "litigation and agency proceedings" across all bargaining units "(1) when they are incident to internal governance; or (2) when they are incident to the negotiation and administration of a collective bargaining agreement and concern unit employees and are normally conducted." (Exhibit RU-2, p. 5; TR 384).

In short, the Court should grant the writ to decide whether the Board majority was correct in refusing to follow *Ellis* by allowing extra-unit litigation to be charged to all nonmembers regardless of the bargaining unit relationship.

3. THE CHARGEABILITY OF OTHER EXTRA-UNIT ACTIVITIES. The Board hides the actual—and most egregious—effect of its ruling: that American workers in the private sector are now required to support collective bargaining in foreign nations, as well as among public sector and railroad and airline employees, if that is what the union chooses to do with its compulsory dues. (Opp. 12-13).

The Board specifically permits IAM to "pool" resources across all bargaining unit lines "whether the contributing units are in the same industry in the same State, in different industries in Canada and the United States, or in different States with different collective bargaining laws within the United States." (Opp. 12). Thus, the Board's decision erases the concept of "bargaining units" from the NLRA (at least where compulsory dues seizures are involved), and removes virtually all limits on IAM's ability to force compulsory support of collective activities in foreign countries and in public sector and railroad bargaining units—no matter how unrelated those activities are to each Petitioner's own bargaining unit. But, in passing the NLRA, Congress could not possibly have intended this result, which cries out for the exercise of this Court's supervisory authority.

In reaching a result that forces workers in the private sector to subsidize foreign, public sector and railroad bargaining units — or be discharged — the Board ignores the fact that the NLRA has no extra-territorial effect. Coverage is specifically limited to certain domestic employers and employees in discrete and identified bargaining units. *See, e.g.*, 29 U.S.C. §§ 152 (2), (3) and (6). Simply stated, foreign employees, public sector employees and railroad employees are not covered by the NLRA, and they are certainly not entitled to largesse seized from

the salaries of unwilling private sector workers under color of that statute.[7]

Moreover, the Board's decision goes far beyond anything contemplated by this Court in *Lehnert*. Although *Lehnert* upheld the chargeability of some extra-unit expenditures, it did require some relationship between the objecting nonmembers' bargaining unit and the union's extra-unit expenditures. "There must be some indication that the payment is for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." 500 U.S. at 524. But there is not a scintilla of evidence in the record even hinting at the notion that IAM's efforts in its diverse bargaining units in Canada, or in the public or railroad sectors have an impact upon the bargaining units covered by the NLRA.

In short, the Court should grant the Petition to limit the extent to which employees covered by the NLRA can be forced to fund union activities in foreign and non-NLRA units.

CONCLUSION

The Court should grant the Petition in its entirety and schedule this case for full briefing and argument.

Respectfully submitted,

Glenn M. Taubman
Counsel of Record for Petitioners

---

[7] Disingenuous is the argument in Opp. 12-13, n.4, that "the dues paid to IAM by employees in petitioners' domestic bargaining units are assessed for the purpose of protecting those bargaining units, not for the purpose of 'representing Canadian bargaining units.'" The Board's decision explicitly permits the IAM to "pool" *all* of its resources across *all* unit lines without regard to nationality or labor laws. Thus, the dues that Milwaukee-based General Electric Medical Systems employees pay into the IAM's "pool" can be used to "protect" Canadian and public sector employees just as much as they "protect" General Electric Medical Systems' employees. Money is fungible, and there is nothing in the record to show that the IAM in any way segregates its foreign dues receipts and expenditures from its domestic ones.

Supreme Court, U.S.
FILED
SEP 28 1998
CLERK

(5)

No. 97-1832

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG, *et al.*,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

GLENN M. TAUBMAN
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160
(703) 321-8510

COUNSEL OF RECORD FOR PETITIONERS

September 28, 1998

APP

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1832

ALAN STRANG, *et al.*,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONERS' SUPPLEMENTAL BRIEF

The first issue presented by this Petition is as follows:

> Are labor unions covered by the National Labor Relations Act required to provide nonmembers with financial statements that are audited by an independent certified public accountant, to explain and justify the amount of the agency fee; or, may they provide nonmembers with only unaudited statements prepared by union members in good standing, who are also paid employees of the union?

As pointed out in the Petition at 10-16, there is a clear conflict among the circuits on this issue. *Compare IAM v. NLRB*, 133 F.3d 1012, 1016-18 (7th Cir. 1998) (reprinted at Petitioners' Appendix ("Pet. App.") 1a), *with Ferriso v. NLRB*, 125 F.3d 865, 867-72 (D.C. Cir. 1997). Although the National Labor Relations Board ("Board") does not dispute the existence of this conflict, Opposition to the Petition ("Opp.") at 20, it nevertheless opposes the granting of the writ on this issue.

Among the reasons for its opposition, the Board claims that review by this Court would be "premature" because:

> the Board currently is reconsidering its position in light of the conflicting decisions. See *Teamsters Local 443 (Connecticut Limousine Service, Inc.)*, 324 N.L.R.B. No. 105 (1997) and *Laborers' Local Union No. 1168 (Work Services Corp.)*, No. 16-CB-4316 (unpublished order dated Apr. 20, 1998), reproduced at App., infra, 10a-11a.

Opp. 21-22 & n.11.

However, the Board has failed to notify the Court that both of these cases, *Teamsters Local 443 (Connecticut Limousine Service, Inc.)*, 324 N.L.R.B. No. 105 (1997) and *Laborers' Local Union No. 1168 (Work Services Corp.)*, No. 16-CB-4316, have settled after remand to the administrative law judges. Thus, in neither of these two cases will the Board be "reconsidering its position in light of the conflicting decisions."

Petitioners believe that the Board had a duty to file a supplemental brief informing the Court of this change in circumstances, since it may affect the Court's consideration of the Petition. *See* Stern, Gressman, Shapiro & Geller, *Supreme Court Practice* 377 (7th ed. 1993). Because the Board has not brought this information to the Court's attention, Petitioners feel compelled to do so. Petitioners did not become aware of these facts until after their Reply Brief was filed.

As noted in Petitioners' Reply Brief at 5-6, the Board has before it other cases that raise this issue. See, *e.g*, *Teamsters Local 166 (Dyncorp Support Services Operations)*, Case Nos. 31-CB-8333, 31-CB-8683 & 31-CB-8938, and *Television Artists-AFTRA (KGW Radio)*, Case No. 36-CB-1491. However, unlike the two now-settled cases in which the Board claimed it was "reconsidering its position," the Board has never identified these latter cases as "lead" cases, or even given any indication that they are under active consideration.

To the contrary, *Television Artists-AFTRA (KGW Radio)* has been pending on exceptions before the Board for over six years, and a Petition for a Writ of Mandamus was recently filed in the United States Court of Appeals for the District of Columbia Circuit to attempt to force a decision to issue. *In re Peter Weissbach*, Case No. 98-1301 (filed July 2, 1998); *see also* "*D.C. Circuit Orders Response to Petition Seeking NLRB Decision in Six-Year Old Case*," Daily Lab. Rep. at A-6 (Aug. 27, 1998). In its Opposition to the Petition for a Writ of Mandamus, the Board indicated that *Television Artists-AFTRA (KGW Radio)* is not one of its lead cases.

CONCLUSION

The two cases in which the Board claimed that it was "reconsidering its position" are no longer pending, and it appears as though the Board is as far from "reconsidering" the issue as ever. Employees across the country should not have to wait even more years (or decades) before the Board "reconsiders its position." The Court should grant the Petition in its entirety and schedule this case for full briefing and argument.

Respectfully submitted,

Glenn M. Taubman
Counsel of Record for Petitioners